

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 21 September 2018

Subject: Time in RO, 20-22 Abbotsbury Road, Morden, SM4 5LQ

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

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing/>

Annex A

Determination

The Licensing Sub-Committee considered an application made by Marius Prisecaru for a new Premises Licence for Time in RO at 20-22 Abbotsbury Road, Morden, SM4 5LQ.

The application was for the following licensable activities and hours:

- 1) Sale of alcohol (on sales only) from 08.00 to 22.00 Monday to Thursday, 08.00 – 04.30 on Friday, 08.00-05.00 on Saturday and 08.00 to 01.00 on Sunday. The applicant also sought the same hours for the premises opening hours.
- 2) Performance of plays for 17.00 to 04.30 on Friday, 14.00 to 05.00 on Saturday and 14.00 to 01.00 on Sunday.
- 3) Live and recorded music and performance of dance 18.00 to 04.30 on Friday, 14.00 to 05.00 on Saturday and 14.00 to 01.00 on Sunday.

Representations were received from the Metropolitan Police, The Licensing Authority, Public Health, Environmental Health, LB Merton Pollution Team and 2 residents against 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 parameters provided by any relevant case law.

A Licence was granted subject to the hours and conditions as follows:

Licensable Activities

The Retail Sale of Alcohol (on sales only): 08.00 to 23.00 Monday to Sunday.

Premises Opening Hours 08.00 to 23.30 Monday to Sunday.

Performance of Plays: 17:00 to 23:00 Friday to Sunday.

Performance of Dance 18.00 to 23.00 Friday to Sunday.

Conditions

The conditions offered by the applicant were imposed by the Committee as follows:

1. A minimum of 2 SIA licensed door supervisors shall be on duty at the premises after 22.00 on Friday and Saturday.
2. The supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
3. The supply of alcohol shall be by waiter or waitress service only.
4. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Licensing Authority and Police Licensing Team. The CCTV system 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 period of 28 days. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 28 day period. The Licensing

Authority and Police will be informed immediately of any defect and prompt steps will be taken to rectify any defect.

The Licensing Sub-Committee noted that as Licensable activities would cease at 23.00, noise conditions could not be imposed, however should problems arise following grant of the premises licence resulting in a review, appropriate conditions could be imposed on a review.

The Licensing Sub-Committee also noted that the applicant sought a licence for Live and Recorded music however this is no longer a licensable activity for the purposes of this premises in view of the hours granted.

The granting of this licence or any variation to it is without prejudice to any requirement to obtain planning permission or a licence for the use of tables and chairs on a street.

Recommendations

The Licensing Sub-Committee noted the warning letter sent in 2018 regarding behaviour towards Council Officers and the Sub-Committee recommended that in future the applicant treat Council and other Officers with respect.

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.

The Applicant Marius Prisecaru stated that:

- The premises had previously had a licence until 1am and had been operating without any issues. This application was to extend until 5am at the weekends to allow for parties and for special occasions but this was not set in stone and would not be every weekend. The applicant stated he would be at the premises during these times.
- He was an experienced operator and had previously orchestrated large events with late (early morning) finish times with no issues at venues in other parts of London.
- He had just put a £60,000 investment into the premises and customers wanted to consume alcohol as well as eat a meal so he needed a licence.
- If there were any issues Mr Prisecaru was open to discussions about conditions.

Committee members questioned the applicant as to why he had not applied for Late Night Refreshment as part of his application. The Applicant responded that his previous licence had not had this included and the omission this time had not been highlighted to him however he would apply for it if needed.

PC Russ Stevens, Metropolitan Police presented his representation stating:

- PC Stevens had a number of concerns regarding the late hours sought, noting that Crime and Disorder does peak after 23.00 and listed a number of recent incidents in the vicinity of the premises, many of which occurred in the early hours of the morning and had a direct link to alcohol. PC Stevens stated that if the licence were granted this would lead to an increase in anti-social behaviour and other issues.
- The applicant had stated that he had given advice to others on licences and was well versed in licensing law, however this conflicted with the fact that this application was the 3rd one that had been submitted in a short time frame.
- The Applicant had to prove to the Police that he was professional and could run the premises safely and required an excellent understanding of their responsibilities. PC Stevens stated that the applicant had not demonstrated this and he had concerns over the applicant's professionalism.
- The premises had previously operated without a valid Premises Licence due to dissolution of the company in whose name the licence was held. It is currently operating under a resurrected licence for off sales only.
- The Police were unaware of any issues of violence at the premises however there had been 2 complaints regarding noise.
- The 3 conditions offered by the applicant had been submitted after a meeting with the police. However there had not been enough control measures put in place, for example the omission of the application for Late Night Refreshment, which meant that if granted, patrons would be drinking without food for 6 hours.
- The Applicant had mentioned the installation of a noise limiter but had given no commitment on the decibel level proposed.

Barry Croft speaking on behalf of the Licensing Authority, presented his representation stating:

- The premises was located in an area of mixed residential and business use.

- The Applicant had failed to address the Licensing objectives for Prevention of Public Nuisance and Crime and Disorder, with only some very limited controls measured.
- The conditions offered were insufficient and due to the lack of measures and excessive hours sought, the application should be refused.

Dan Butler, speaking on behalf of Public Health, presented their representation and highlighted the issues in the surrounding area.

Mark Dubet spoke on the representation from the Pollution Team. The applicant responded that he would install a noise limiter if required and that acoustic materials had been used in the refurbishment to prevent noise escaping, but that no noise testing had been undertaken as yet.

Andrew Bradley spoke presented his representation from Environmental Health advising that Food Hygiene Inspections could be done without prior notice and gave an account of the applicant's behaviour towards Council Officers from the Environmental Health team during a recent inspection.

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

- In the past the premises had operated without a valid licence and currently operated under a resurrected licence for off-sales only. The applicant had submitted this new application for a late night licence without proper consideration of appropriate control measures and licensable activities applied for to meet the licensing objectives in this mixed commercial and residential area.
- The Licensing Sub-Committee considered that it was not appropriate to grant the late licence as sought in this mixed commercial and residential area taking into account the representations received from Responsible Authorities as well as residents. The hours sought were excessive.
- The Sub-Committee shared the Responsible Authorities' concerns regarding the applicant's ability to successfully manage a late night licence without impacting on the licensing objectives, previous lapses in compliance, previous noise complaints received and attitude towards authority/regulation.
- The operating schedule is required to include information that is necessary to enable the Licensing Authority (or an interested party or Responsible Authority) to assess whether the steps to be taken to promote the licensing objectives are satisfactory as set out in section 16 of the Council's Licensing Policy.
- However the limited measures proposed by the applicant following a meeting with the police did not sufficiently address the impact of a late night licence with, for example, no robust noise management plan, no noise limiting device and no acoustic assessment.
- The condition offered regarding alcohol to be ancillary to a meal, although welcome was insufficient for a late licence in this case as the applicant had not applied for late night refreshment which meant that hot food could not be sold with alcohol after 23:00 hours
- The Licensing Sub-Committee was of the view that the licence being granted with a terminal hour of 23:00 for licensable activities and a closing time of 23:00 is appropriate and proportionate in the above circumstances.
- The Sub-Committee was satisfied that the decision and conditions imposed are appropriate and proportionate to uphold the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

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.