

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 7 August 2020

Subject: Old Rutlishians Trading Limited, The Clubhouse, Poplar Road, Merton Park, SW19 3JS

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.

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Useful documents:

Licensing Act 2003

<http://www.hms.o.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 Old Rutlishians Trading Limited for a new premises licence for the premises located at The Clubhouse, Poplar Road, Merton Park, SW19 3JS

The application sought a Premises Licence, intended to replace the current Club Premises Certificate, to authorise the following licensable activities:

- The supply of alcohol for consumption both on and off the premises –Sunday 11:00 to 22:30 then Monday to Saturday 10:00 to 23:00.
- Indoor sporting events – Sunday to Thursday 12:00 to 22:00, Friday & Saturday 12:00 to 23:00
- Live music, recorded music, performances of dance and anything of a similar description– Sunday to Thursday 12:00 to 22:00, Friday & Saturday 12:00 to 23:00.

The opening hours requested are Sunday 11:00 to 22:30, Monday to Thursday 10:00 to 23:00 then Friday & Saturday 10:00 to 00:00.

Seven representations were received from local residents.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, in this case the prevention of Crime and Disorder and the prevention of public nuisance, 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.

The application was granted with a number of conditions as detailed within this decision notice.

Licensing Sub-Committee Hearing

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

Mr Mike Stallard, the applicant, stated that:

- The club had no intention of opening until midnight on a usual basis preferring 11pm, however this would allow the club to open to these times without the need to apply for a Temporary Event Notice.
- The Applicant was, having heard the concerns of residents, willing to remove the midnight request for Friday and Saturday, ceasing supply of alcohol at 11pm and allowing for 15 or 30 minutes for those onsite to then leave.

A number of the interested parties expressed concern regarding the move from a Club Premises Certificate to a Premises Licence and whether this would enable the premises to be used as a public house for non-members. The Applicant advised in response that he understood and shared those concerns and so a condition had been included within the application so that the club would only be open to members or non-members who had booked a private event.

David Forward, speaking to his representation stated:

- Noise from events was a concern. Despite using the halls for ballroom dancing etc, the club advertises online for receptions and events and events can be very large. Mr Forward noted that the soundproofing information within the supplementary agenda sounded promising and the phone line to enable residents to call and discuss issues. Mr Forward felt would also be an improvement.
- Regarding exit noise after social events, there was noise from talking, car noise, taxis waiting, car doors, horns etc etc, sometimes for a long time. Neighbours have been keeping records of complaints and there had been 35 occasions between 2013-2019 when one or more residents had complained including three households who complained about a birthday party in October 2019. Mr Forward requested that the club retain the Premises Licence conditions imposed at the Licensing Sub-Committee in 2010 as well as any other extra conditions that could be imposed to prevent noise.

Sara Phillips, spoke to her representation:

- she was concerned that although there were a lot of good intentions, discussing concerns with residents appeared to only be dealt with by one person (Mike Stallard) and that there were not the systems in place to follow through with any resolutions.
- she expressed concern that hirers and committee members did not seem to be aware of the conditions on the current Club Premises Certificate.

Mr Hutchins, speaking to his representation stated that:

- he had concerns that no member of staff at the club appeared to have the responsibility of ensuring the 2010 Club Premises Certificate conditions were adhered to.

- he described the littering and noise nuisance from cars as well as patrons leaving the premises and shouting after every event and that once patrons left the club and were on the street there was no further action taken to resolve these issues caused in the residential streets surrounding the club.

The Applicant's representative, Mike Stallard, stated in response to the interested parties:

- He felt there was goodwill on both sides and that the club had tried to work with residents over the years. A number of events had been turned down if the club feared they would be too difficult to control and this had led to the club refusing any requests for 18th or 21st birthday parties.
- The premises had two security guards on duty for any parties and they have authority for what happens on the premises but not any issues that occur offsite.
- The club had just set up a new board of trustees which would include two local residents. This would ensure that issues could be discussed and raised more.
- He recognised the issue of noise particularly from children playing outside later at night recently and had talked about a residents' charter which both parties could sign up to. He was also considering the roping off of certain areas.

In closing, the Interested parties reiterated that the premises was located within a residential area and that concerns remained regarding increased noise and disruption and requested that the club certificate be retained along with the 2010 conditions and any additional ones which would reduce noise.

Mr Stallard thanked all the respondents. He noted that members are often local members. He felt the club was part of the local community but did recognise that at times events had impacted badly on the neighbours. However he believed that the club did try and resolve issues when they occurred.

Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the Premises Licence application with the conditions below and with the following licensable activities and hours:

- Supply Of Alcohol (on and off the premises)
11:00 to 22:30 Sunday
10:00 to 23:00 Monday to Saturday
- Indoor Sporting Events
12:00 to 22:00 Sunday to Saturday
- Live music, recorded music, performances of dance and anything of a similar description
12:00 to 22:00 Sunday to Thursday
12:00 to 23:00. Friday & Saturday
- Opening Hours
11:00 to 22:30 Sunday,
10:00 to 23:00 Monday to Thursday

10:00 to 23:30 Friday & Saturday

conditions:

1. No live music to take place upstairs apart from on Halloween which will end by 11pm
2. Licensable activities will only be provided for the benefit of club members, guests of the club or persons attending a pre-booked function
3. No live music or entertainment outside with the exception of the annual "Rutfest" event when this will be allowed until 20.30 hours.
4. After 20.30 when regulated entertainment is being provided, patrols shall take place on an hourly basis at the perimeter of the property to ensure that no sound is audible at the nearest residential property. After 23.00 the patrols should also address patrons causing issues outside the premises.
5. Any sound audible at the nearest residential property shall be addressed immediately and reduced to a level that is not audible at the nearest residential property. This does not apply to the annual Rutsfest which normally takes place on the Sunday preceding the second Bank Holiday in May (or such alternative date to be advertised in advance)
6. A logbook shall be kept to record such patrols and any incidents that occur and the logbook shall be made available for inspection by any relevant authorities.
7. Clear signs that are a minimum of A4 signs shall be placed at all exit points stating "This is a residential area, please leave quietly".
8. No 18th or 21st birthday parties to take place at the premises
9. High density foam plugs to be installed to the window reveals,
10. Noise reducing drapes with jack chains to be installed as well as pelmet boxes
11. Foam plugs but no drapes to be installed within the 1st floor kitchen
12. Drape to be installed in front of servery hatch
13. Windows and doors to be closed during events
14. At least two door supervisors to be on duty outside when a private event is taking place.
15. Landline phone to go to the bar to be installed and answered during opening times and where possible outside of opening times
16. Outside use of the premises to stop at 10pm
17. Good quality CCTV must be fully operational at all times the premises are open for licensable activities. Footage must be kept for at least 31 days and will be available to Police upon request.
18. A challenge 25 Policy will be adopted and clear signage displayed
19. The supply of alcohol during private events will remain the responsibility of premises staff

The Licensing Sub-Committee were pleased to see the constructive approach taken by all parties during discussions and all had some additional recommendations for the Applicant which the Sub-Committee would recommend and would be pleased to see enforced:

- The Licensing Sub-Committee recommends that the Club's proposal of a charter that club members sign up to particularly in relation to noise from children in the evenings should be adopted;

- The Licensing Sub-Committee recommends that anyone hiring the premises should have a copy of the premises licence and conditions and a signed agreement requiring them to comply with them, it being a matter of contract whether there were to be a penalty for non-compliance.

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

- a) The Licensing Sub-Committee recommends that the club's proposal to that the conditions offered within the application, supplementary agenda and offered at the meeting addressed the issues raised by the representations
- b) The Licensing Sub-Committee recommends that a full noise management policy be considered and adopted to address the issues raised.

The case of *Luminar Leisure Ltd v Wakefield Magistrates' Court & Brooke Leisure Ltd, Classic Properties Ltd, Wakefield MDC 2008* was considered during deliberations in so far as the Licensing Sub-Committee considered noise issues and disturbances from patrons outside the premises and surrounding streets in respect of areas beyond the licensee's control.

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.

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