

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 19 July 2021

Subject: Unit 114 (aka Queens Road Market), Centre Court Shopping Centre, Queens Road, Wimbledon SW19 8YA

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.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 Lynsey Coleman for a new Premises Licence for Unit 114 (aka Queens Road Market), Centre Court Shopping Centre, Queens Road, Wimbledon SW19 8YA.

This is a new premises licence application for a unit in Centre Court Shopping Centre. The applicant has applied for the retail sale of alcohol for consumption on and off the premises, Monday to Sunday from 10.00 to 22:30. The opening hours stated in the application are Monday to Sunday 10.00 to 23.00.

One representation was received from a local resident.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives especially 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.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, its Agenda and Supplementary Agenda papers, the Representation contained in the agenda papers and the submissions made at the hearing and the submission of the outside area plan.

The Licensing Manager spoke to explain the technical point that the plans of the premises the application submitted with the plan was correct, the applicant will be supplying alcohol on and off the premises. It was highlighted on the plan, the sales of alcohol would take place inside rather than erect a bar outside which is not featured on the plan.

The Licensing Manager confirmed the Applicant has agreed conditions with Trading Standards and the MET Police, who both withdrew their representations on that basis.

The Applicant, Lynsey Coleman, explained that:

- The retail sale of alcohol is to be consumed inside the premises and outside the premises in the designated seating area within the Centre Court premises – the off sales are not for purchase and to take home. The premises has already began trading selling food that does not require a Premises Licence, and for sales of alcohol have been trading using a series of Temporary Event Notices including the outside space of Centre Court on the Queens Road End side.
- The premises is located within the main Centre Court which will close at 7pm. The premises has a Queens Road exit / entrance that will allow them to trade beyond 7pm. The internal door will be closed at 8pm. The Queens Road exit door/ entrance will be kept clear, but can be used as an entrance.
- Responding to questions from the Licensing Sub-Committee the Applicant explained how individuals would leave the premises. The operation of the premises will be by waiter / waitress table service for alcohol regardless of the position of the table. There is a branded barrier to separate the tables from the area outside the designated outside table area.
- The Applicant was able to produce a plan of the outside designated pavement area owned by Centre Court, which comprises 15 tables. The Applicant confirmed the fire exits were kept free of any tables or paraphernalia and consulted with the Fire Brigade.
- The Applicant explained she was employed by the shopping centre. She explained that the aim of the premises was to create a post Covid space for people to enjoy and spend some time, and to help reinvigorate the area and Centre Court and so to help fill some of the Units that now stand empty. The aim was to liven up the space around this side of Centre Court and as a pop up food court internally with a bar and with an outdoor street food with seating to consume that food or alcohol. is proposed to be a temporary operation at present but if popular the aim is to continue its operation.
- There have been a number of measures to ensure the safety of the area which has been operating under TENs for the past two weeks without incidents involving the two major events of Wimbledon Tennis and the Euro Football tournaments.
- Door supervisors are present daily, although this will be reduced to Thursday, Friday and Saturday after the Football has finished.

- CCTV is installed in all the areas including under the Colonnades and any blind spots in the outside seating area. This has been done in collaboration with the Police and in conjunction with all staff undertaking the ACTS anti-terrorist training.
- The clientele that has been drawn towards the premises over the past two weeks has been of good character.
- The street furniture is bought indoors and locked up when they close for the night.

Helen Clark Bell explained to the Licensing Sub-Committee how the premises would benefit the Town and night time operation safely. She believed this side of the shopping centre has been underutilised and dormant for a while now.

Paula Burnett had submitted a representation but could not attend the Licensing Sub-Committee meeting and sent her apologies. She requested her objection should stand, and the Licensing Sub-Committee considered the information she submitted, plus the additional information she had since submitted. The Committee Officer noted her main points were as follows:

- Ms Burnett referred to the South Park Gardens Conservation Area and the Broadway Conservation Area. However, such matters were for the Planning Authority and not the Licensing Sub-Committee to consider (*Blackwood* case applied). The Licensing Sub-Committee was only concerned with promoting the Licensing Objectives.
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- Ms Burnett also suggested the area did not require more food outlets. Such matters were not matters that the Licensing Sub-Committee could consider. The section 182 Home Office Guidance specifically states that: “14.19 “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy”.
- Ms Burnett was concerned for the safety of the area in particular at risk of attracting unwelcome activities. She thought rough sleepers may find the colonnade a better option than a local shop doorway. She thought that although the police station is close, the police have many more significant matters to attend to. She thought that the food stalls can only be accessed by customers standing on steps. She thought that there was a risk they will fall when stepping backwards with purchases down another step. She thought that there was limited pavement space for pedestrians between bicycles in the bike racks, the coffee bike and the bar boards. Such matters had been dealt with by the Conditions agreed with the Police and the siting of the CCTV cameras or were not matters for the Licensing Sub-Committee to address.
- Ms Burnett was concerned with a potential increase of noise pollution (including from the live music performance space near the Queens Road door). The Licensing Sub-Committee noted her point but observe that the premises was located in the centre of Wimbledon Broadway, and applied the Thwaites case in their reasoning.

Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the Premises Licence application, as follows:

Licensable Activities:

Retail Supply Sale of Alcohol (on and off sales)
10.00 to 22:30pm Monday to Sunday

Opening Hours:

10am 10.00 to 23.00 Monday to Sunday

- Conditions offered by the Applicant in Operating Schedule and not amended by the Police conditions:

The age at which the age verification policy required by the mandatory condition attached to this licence is set, shall be 25 years of age, in that anyone who appears to be aged 25 years or under shall be required to produce appropriate evidence as stated in the policy to prove they are 18 years of age or over.

- Conditions agreed with the Metropolitan Police:

SIA Registered Door Supervisors

On Thursdays, Fridays, Saturdays, all major sporting events, bank holidays, Halloween, Christmas Eve, Private Events and New Year's Eve a minimum of two Security Industry Authority (SIA) registered Door Supervisors from the an Approved Contractor Scheme registered company must be employed at the premises from 20.00 hours, 16:00 hours for sporting events until all members of the public have left the premises. The licensee must take all the necessary precautions to prevent offensive weapons and drugs entering the premises. All Security Industry Authority Supervisors to wear Body Worn Cameras. A log shall be kept of the SIA door supervisors on duty including their full name, date of birth, SIA licence number, company details and booking on-off times. Security Industry Authority registered Door Supervisor shall patrol the immediate exterior of the premises to ensure that patrons leave the area quickly and quietly.

Glass

Drinks will not be served in glasses or glass bottles in the outdoor areas.

Dispersal

The premises will implement a Dispersal Policy which will seek to minimise any potential disturbance as customers leave the premises. This will include a reasonable timed reduction in music volume and increase in lighting prior to closure. In addition, suitable notices shall be displayed at all exits requesting customers respect the needs of the local residents and leave the area quietly. The internal entrance leading to the Centre Court Shopping Centre will be closed no later than 2000 hours.

CCTV

The CCTV system installed at the premises shall be maintained in effective working order, and shall be in operation at all times the premises is open to the public. All recordings made by the CCTV system shall be retained and stored in a suitable and secure manner for a minimum of 31 days, and shall be made available on request to the Metropolitan Police, the Licensing Authority or other Responsible Authorities. At all times the premises is open to the public a minimum of one member of staff on duty will be able to operate the CCTV system.

Security incidents

An incident log shall be kept at the premises and made available on request to Metropolitan Police, the Licensing Authority or other Responsible Authorities. It must be completed within 24 hours of the incident and will record the following;

- All crimes reported to the premises.
- All ejections of patrons.
- All complaints received concerning crime and disorder.
- Any incidents of disorder.
- All seizures of drugs or offensive weapons.
- Any faults in the CCTV system.
- Any refusal of the sale of alcohol.
- Any visit by a relevant authority in relation to service

ACT Awareness

ACT Awareness eLearning shall be completed by all managers and staff of the premises. (<https://www.gov.uk/government/news/act-awareness-elearning>)

- Conditions agreed with the Trading Standards:

1. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children.
2. An effective methodology shall be in place at all points of sale to ensure staff undertake appropriate age checks on potential sales of alcohol (and any other age-restricted product).
3. All staff that undertake the sale or supply of alcohol (and any other age-restricted product) shall receive appropriate refresher training in relation to undertaking appropriate age checks on such, at least every three months.
4. Records of all staff training, relating to the sale or supply of alcohol (and any other age-restricted product), along with any training material used, will be kept and maintained by the Designated Premises Supervisor or the Premises Licence Holder.
5. Staff training records shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.

- Conditions Imposed by the Licensing Sub-Committee:

- a. No screens shall be erected on a temporary or permanent basis outside the premises in the designated outside seating area.
- b. The sale and supply of alcohol for consumption in the premises or in the designated outside seating area shall be restricted to alcohol consumed at tables and chairs shown on the licence plans and shall be by waiter or waitress service, served only to a person seated.
- c. Deliveries to the premises and the disposal of refuse such as bottles shall occur at a time when it is not likely to cause a disturbance to residents in the vicinity of the premises. Noise shall not emanate from the premises so as to cause a public nuisance to nearby residential properties. Prominent clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

Reasons

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

- A. The operation proposed was modest with the seating condition internally and externally and the number of covers;
- B. There had been no complaints arising from the few weeks of trading under the TENs, which indicated the operators could manage the premises and the premises was unlikely to add to cumulative impact, especially for the modest hours sought;
- C. Centre Court had been an operational aspect of the night time economy in Wimbledon Broadway for a considerable time, so it was unlikely that the premises would add to cumulative impact;
- D. The style of operation mainly proposed involved expected consumption of 'street food' with alcohol and was more aimed towards families. It had the added benefit of the colonnades and Queens Road sides being used and CCTV being in place to support this area. There was also an endeavour to try something new in this area and to regenerate Centre Court and make it attractive for the benefit of the community.

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.