

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 21 April 2023

Subject: Old Emanuel Rugby Football Club Limited, The Pavilion and Raynes Park Sports Ground, Taunton Avenue, Raynes Park SW20 0BH

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 Authority received an application from Old Emanuel Rugby Football Club Ltd for a nNew Club Premises Certificate

The applicant originally applied for:

- the supply of alcohol on and off the premises Monday to Friday from 17:00 to 23:00,
Saturday from 11:00 to 00:00 midnight and
Sunday from 11:00 to 23:00.
- Opening Hours
Monday to Friday from 16:00 to 23:30,
Saturday from 10:00 to 00:30 the following morning and
Sunday from 10:00 to 23:30.
- A club premises certificate which authorises the supply of alcohol for consumption off the premises must include the following conditions.
 - The supply must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises.
 - Any alcohol supplied for consumption off the premises must be in a sealed container.
 - Any supply of alcohol for consumption off the premises must be made to a member of the club in person.

On 15 March 2023 the Licensing Authority received an email amending the application to reduce the hours. The hours now applied for are:

- The supply of alcohol on and off the premises
Monday to Friday from 17:00 to 23:00,
Saturday from 11:00 to 00.00 midnight and
Sunday from 11:00 to 22:30.
- Opening Hours
Monday to Friday 23:30,
Saturday 00:30 and
Sunday 23:00.

Twelve representations were received from local residents in relation to the application

During the course of the meeting, the Applicant offered a reduction in the permitted operating hours of the premises to:

- The supply of alcohol on and off the premises
Monday to Friday from 17.00 to 23:00,
Saturday from 11:00 to 23:00 and
Sunday from 11:00 to 22:30
- Opening Hours

Monday to Saturday 23:30, and
Sunday 23:00

That use of the outside areas would cease at 9.30pm.

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 any relevant case law.

The Premises Licence was granted to the reduced hours of opening offered at the meeting with the imposition of the agreed conditions and additional conditions imposed by the Licensing Sub-Committee as detailed further in this notice.

Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, the agenda papers and the oral evidence submitted at the hearing by all parties present.

Matthew Hearsum, Director of Old Emanuel Rugby Football Club Ltd, spoke to present the application, stating:

- The Club would be happy to reduce their licenced hours in line with the terms of the Club Premises Certificate that Old Wimbledonians had to comply with, to allay community concerns, and to halt consumption of alcohol in outdoor areas after 9.30pm
- The Club had held a number of 'Bring your own' events without complaints from neighbours recently
- The club is eager to be a good neighbour, has offered conditions to reflect the concerns of neighbouring residents, and hopes that the venue will be a club for local residents.

In response to questions from the interested parties and the Licensing Sub-Committee, the Applicant responded:

- The outside licensable area was set to accommodate pitchside drinking by spectators, it was not intended to have late night outdoor drinking
- The outside licensable area was not intended to host large marquees for big events, and the club would apply for a TEN should such a requirement arise in the future.
- The plan shows the boundaries of the grounds, but the club would be open to reducing this to reflect areas that would be used and move drinking away from neighbouring residential properties.
- There was no intention to use the area at the back of the Pavilion, which currently contained containers for storing equipment
- The club would submit a revised plan to show reduced drinking areas, if requested by the Licensing Sub-Committee reducing the potential nuisance.
- The Club intends to hold community meetings each quarter to allow neighbours to raise any concerns.

Mrs Keay, Interested Party, spoke to her representation:

- When there was no club there, the area had been used by cricketers who drank outside until late in the night and left rubbish behind;
- It is good to have someone taking care of the area and controlling drinking on the site and making sure that it was cleared of rubbish or cans/bottles the next morning when people were walking their dogs;
- Local concerns were around the late sale of alcohol, among other matters, but if the Saturday night was limited to 11pm and closure at 11.30pm, this would allay her own concerns;
- If the use of the premises after 9.30pm was limited to inside the clubhouse, there would be concern if this included an open roof terrace close to residential premises.

In response, Mr Hearsom confirmed that the terrace would not be used after 9.30pm, but there would be a small designated smoking area on the lower porch, this would not be for large crowds.

Mrs Keay was content to withdraw her objections, as the conditions agreed seemed reasonable.

In closing, Mr Hearsom confirmed that the Club was not asking for an events venue or creating a pub, it was a community venue for members, including local residents.

The Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to grant the application with the following licensable activities and opening hours:

- Supply of alcohol on the premises to members and their bona fide guests
Monday to Friday 17:00 to 23:00,
Saturday 11:00 to 23:00 and
Sunday 11:00 to 22:30
- Opening hours for the premises
Monday to Friday 17:00 to 23:30,
Saturday from 11:00 to 23:30 and
Sunday 11:00 to 23:00

The Licensing Sub-Committee imposed further conditions as follows:

- Outdoor drinking or use shall cease after 21:30 every day.
- No marquees accommodating more than 20 people shall be permitted within the licenced area.

The applicant removed the areas behind the Pavilion close to properties on Somerset Avenue from the licensable area, providing a revised licensing plan for the purpose.

The Licensing Sub-Committee imposed the conditions extracted from the Operating Schedule in the Application as follows:

1. A record of complaints shall be maintained on the premises to record details of any complaints received. The information to be recorded shall include the date and time of complaint and subsequent remedial action undertaken and (where disclosed) the complainant's name and location.
2. The record of complaints shall be kept for 12 months from the date of the last record made and shall be available for inspection on demand by the police or an authorised officer of the Licensing Authority at all times the premises are open.
3. A closed-circuit television (CCTV) system shall be installed at the premises and shall be maintained in effective working order.
4. Coverage of the CCTV system shall include all public areas of the premises.
5. The CCTV system shall be in operation at all times that the premises is open to the public and all times that staff are on the premises.
6. CCTV footage shall be retained for a minimum of 31 days and shall be made available on request from the Licensing Authority or Police.
7. At all times the premises is open to the public a minimum of one member of staff on duty shall be able to operate the CCTV system
8. An incident log shall be kept at the premises and made available on request to an authorised officer of the Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - i) all crimes reported to the venue
 - ii) all ejections of patrons
 - iii) all complaints received concerning crime and disorder
 - iv) any incidents of disorder.
 - v) any faults in the CCTV system.
 - vi) any visit by a relevant authority in relation to service.
9. All members of customer facing staff, shall be provided with Welfare and Vulnerability Engagement (WAVE) training to provide those working in the licensed industry with an awareness of vulnerability and their responsibilities towards people visiting their premises. This training is available at <https://nbcc.police.uk/guidance/wave- presentation>
10. All members of customer facing staff, shall be provided with basic Counter Terrorism Awareness Training by the Premises Licence Holder. Such training is available at <https://www.gov.uk/government/news/act-awareness-elearning> or via the local Counter Terrorism Protect Officer (CTPO)

11. Duty managers shall have access to the NaCTSO ACT App and / or PSO Shield App when on duty at the site. Both of which provide Counter Terrorism advice and guidance.

See below links;

a) PSO London Shield App

<https://apps.apple.com/gb/app/ps0-londonshield/id1482303493>

b) NaCTSO ACT App

<https://www.gov.uk/government/news/new-act-applauded>

12. External lighting shall be provided.

13. Signage shall be displayed stating the location of parking for club members.

14. Clear legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.

15. A phone number to allow residents to contact the Club Secretary/Committee members shall be provided, so that incidents can be addressed as they are occurring.

16. The Club Secretary and Committee members shall hold a quarterly meeting with the community to talk about issues that have arisen.

17. Children shall only be admitted to the bar when accompanied by an adult, parent or guardian.

18. A welfare safeguarding officer shall carry out a risk assessment for every rugby tournament.

19. Evidence of age in the form of photo identification shall be requested from any person appearing to those selling or supplying alcohol, to be under the age of 25 and attempting to buy alcohol. Examples of appropriate photo identification include a passport, driving licence, and the Proof of Age Standards Scheme (PASS) approved age card.

20. Notices shall be placed at all points of sale detailing the restrictions on sales of alcohol to children

21. A record of refusals shall be maintained which documents every instance that a sale of alcohol (and any other age-restricted product) is refused on the premises, indicating the date and time the refusal was made, and the member of staff making the refusal.

22. The record of refusals shall be available for inspection by authorised officers of the licensing authority, officers of the trading standards service, and officers of the Police.
23. 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).
24. All staff that undertake the sale or supply of alcohol (and any other age-restricted product) shall receive appropriate training in relation to undertaking appropriate age checks on such, before being allowed to sell or supply any alcohol (and any other age-restricted product). Refresher training shall be carried out at least every three months.
25. 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, shall be kept and maintained by the Club Secretary and Club Premises Certificate Holder.
26. 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.

Reasons

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

- 1) The Licensing Sub-Committee accepted the Applicant's proposed amendment to the application in terms of reducing the terminal hour for Licensable activities, reducing the opening hours of the premises and the footprint of the licenced area to address the concerns of those that submitted Representations in relation to late night public nuisance.
- 2) The Licensing Sub-Committee believed that the conditions proposed and imposed, and the amended licensing plans, addressed the concerns of the Licensing Sub-Committee and interested parties.
- 3) The residents were able to seek a Review of the Premises Licence should they experience breaches of the conditions or the hours of trading or 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.