

Merton Council
Licensing Sub-Committee
20 December 2022
Supplementary agenda

7 Notice of Determination

1 - 8

This page is intentionally left blank

London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 21 December 2022

Subject: CMYK, 105-109 The Broadway, London, SW19 1QG

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.

For enquiries about this matter please contact

Democratic Services
Civic Centre
London Road
Morden
Surrey
SM4 5DX

Telephone: 020 8545 3616

Email: democratic.services@merton.gov.uk

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 the Metropolitan Police for a Summary Review of the Premises Licence of “CMYK” at 105-109 The Broadway, Wimbledon, London SW19 1QG.

In discharging its functions in respect of this Summary Review, the Licensing Sub-Committee had to take such steps to promote the Licensing Objectives, have regard to the Home Office Guidance and/or the Council’s Statement of Licensing Policy, and apply relevant case law, whilst taking such steps that are appropriate and proportionate, pursuant to section 52 of the Licensing Act 2003.

In determining the Summary Review under section 53A – 53D of the Licensing Act 2003, the steps available to the Licensing Sub-Committee at the Review hearing were as follows:

- To modify the conditions of the Premises Licence
- To exclude a licensable activity from the scope of the Premises Licence
- To remove the designated premises supervisor
- To suspend the Premises Licence for a period not exceeding three months
- To revoke the Premises Licence.

The Licensing Sub-Committee decided to revoke the Premises Licence held by Webbs Leisure Ltd for the premises “CMYK” at 105-109 The Broadway, Wimbledon, London SW19 1QG. The reasons for this decision can be found at the end of this notice.

Licensing Sub-Committee Hearing

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

Flora Curtis, barrister representing the Applicant (the Metropolitan Police), advised that Police officers had attended CMYK on numerous occasions since April 2021 for incidents including assault and sexual assault involving both patrons and members of staff. The previous Review Application referred to serious or concerning incidents including on Tuesday 22nd November (assault), Friday 24th June 2022 at 00:34hrs (assault), Sunday 12th June 2022 at 01.30 (sexual assault), Sunday 17th April 2022 at 01:00hrs (GBH), Friday 15th April 2022 at 23:45hrs (GBH), Friday 15th April 2022 at 01:45hrs (assault), Saturday 26th March 2022 at 02:30hrs (sexual assault), Saturday 12th March 2022 at 22:13hrs (assault/GBH), Saturday 27th February 2022 at 02:20hrs (ejection/police attendance), Monday 21st February 2022 (intoxicated customer taken to hospital), Sunday 20th February 2022 at 01:20hrs (assault), and Saturday 05th February 2022 at 03:00hrs (3 sexual assaults).

Although the Metropolitan Police had worked with the venue to improve training and taken them through the Home Office Step Programme to help them improve the situation, any improvements following engagement appeared to be temporary.

A previous Review of the Premises Licence on 27th June 22 had imposed additional conditions on the Premises License to address concerns about crime at the venue, whilst reducing the terminal hours on weekends from 3am to midnight.

A visit from the Metropolitan Police Licensing Officer on 10 September found that security staff were not wearing body cameras, as stipulated by the additional conditions imposed on the Premises Licence following the June Review of the Premises License.

The incident on 22nd November showed that the introduction of polycarbonates and removal of bottles and glassware, as stipulated by the additional conditions imposed on the Premises Licence following the June Review of the Premises License, had not happened, and indeed glass bottles were used as 'weapons' by the parties involved in the assault.

The incident on 22nd November also showed that only one SIA was working, against the stipulations imposed in June.

Neither the Premises Licence Holder nor any other representative for the operators of the premises were in attendance at the meeting.

Decision of the Licensing Sub-Committee

The Licensing Sub-Committee decided to **revoke** the Premises Licence.

Pursuant to section 53D of the Licensing Act 2003, the Interim measures, of 29 November 2022, shall remain in place pending the decision coming into force or pending any other determination.

Reasons

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

1. There is concerning evidence of persistent serious incidents occurring at this venue, which have not been adequately addressed or dealt with. The case of *Daniel Thwaites v Wirral Borough Magistrates' Court (2008)* applied.
2. Despite the additional conditions imposed on the Premises License, incidents have continued which indicate that the Prevention of Crime and Disorder and Public Safety Licensing Objectives are being undermined.
3. The atmosphere at the venue has not changed, and the evidence from the incident on 22 November showed that the venue has not taken the required actions, such as:
 - a. an increase of SIA door supervisors personnel had not taken place (the incident could not be managed due to there not being at least 2 SIA door Supervisors in the bar area to stop the fight or adequate door staff to manage removal of those involved in the fight and this indicated no proper risk assessment was being carried out),
 - b. use of polycarbonates and removal of glassware glass bottles had not taken place, in that those involved in the fight were clearly drinking from and then using bottles to hit or attack each other,
 - c. the former DPS did not attempt to prevent or reduce the severity of the incident.
 - d. Emergency Services had not been called by the DPS or other staff, despite a clear need for medical and police assistance.
 - e. The DPS was unable to provide CCTV evidence to the Police.
4. The Licensing Sub-Committee does not consider that the decision to make these changes constitutes an infringement of or non-compliance with the public sector equality duty under section 149 of the Equalities Act 2010, or involves any discrimination either directly or indirectly. The case of *R (on the application of Bristol City Council) v Bristol Magistrates' Court [2009] (Sommerfield)* considered.
5. The Licensing Sub-Committee considers that revocation of the Premises License is a proportionate response to persistent criminal activity and lack of competent management by the Premises License Holder and the Designated Premises Supervisor. The case of *R (Bassetlaw District Council) v Worksop Magistrates' Court* considered.

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.

This page is intentionally left blank