

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 7 July 2022

**Subject:** Super Groceries Ltd, 1 Commonside East, Mitcham, CR4 2QA

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](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 Super Groceries Ltd for a new Premises Licence for Super Groceries Ltd, 1 Commonsides East, Mitcham, CR4 2QA. The application sought the following Licensable Activities and hours:

The supply of alcohol

Monday to Friday from 10:00 to 20:00

Saturday from 10:00 to 19:00

Sunday from 10:00 to 16:00

Opening Hours

Monday to Friday from 07:00 to 20:00

Saturday from 08:00 to 19:00

Sunday from 09:00 to 16:00

Two representations were received in relation to the application from local residents. Agreement was reached on a number of conditions with both the Metropolitan Police and the Council's Trading Standards Officer, who therefore withdrew their representations prior to the Licensing Sub-Committee meeting.

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, have regard to the London Borough of Merton Council's Statement of Licensing Policy, and comply with any relevant case law.

The Application was **granted** as now sought with the conditions offered in the application's Operating Schedule and those agreed with the Responsible Authorities the Metropolitan Police and the Council's Trading Standards Officer.

## **Licensing Sub-Committee Hearing**

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

The Licensing Manager gave a brief overview of the Application.

Mr Robert Botkai, Solicitor representing the Applicant, presented the presented their submissions on the application:

- Super Groceries Ltd acquired the store in November 2021;
- Patrycja owns the business with her partner, they own two other stores in Hammersmith and Roehampton;
- It's a convenience store and deli, 60% of the customers are Polish/East European and the goods reflect this;
- The store sells fresh and dry goods, and has limited opening hours, from 8.30am until 8pm, Monday to Friday, Saturday 9 until 9 and Sundays 10am until 4pm. And the application reflects these limited hours;
- All alcohol will be kept behind the counter, with no self service of alcohol at all, and a limited range;
- Police and Environmental Health have agreed conditions. Responsible Authorities have not made representations against the application;
- The conditions are designed to address concerns around street drinking;
- The application states no more than 20% of the store for display of alcohol but the reality is that it will be closer to 10%;
- The applicant has agreed to actively engage with the Police and Licensing Authority and all alcohol acquired from the wholesaler and will have a clear window policy so can see outside the store;
- We acknowledge the representations from local residents, one which references an application for a previous store on the site from 2014, where the applicant didn't engage with the Police or the Licensing Sub-Committee, and the application was refused. And also concerns around drinking by the Three Kings Pond. We believe this application addresses those concerns due to the limited scope of the application and the conditions agreed;
- The premises is on the fringe of the ClZ, far from Cricket Green and Figges Marsh, away from the town centre;
- The lack of self-service for alcohol, means that there cannot be theft of alcohol and staff will be trained not only in 'challenge 25' but also to ensure no sales are made to anyone already intoxicated.

In response to questions, the Applicant's solicitor confirmed that the plans for the licence were to maintain the hours applied for and that if there were plans to vary the licence a further application would be required and the local residents would have the opportunity to make representation against such an application. The solicitor also reiterated that the Police had agreed the proposed conditions set out in the application in order to address concerns around street drinking and cumulative impact and acknowledged that licences can be reviewed.

The owner explained that the alcohol to be sold was expected to be premium spirits, liqueurs and beers which would be more expensive than the brands attractive to street drinkers. The proportion of income sales would be less than 5%, but by offering

alcohol sales, they would be able to increase their footfall for their other products, rather than them going to other stores where they can purchase their whole shopping basket. The shop is surviving, they need to do something to increase footfall and revenue, the licence will help with that.

Interested Parties raised the following concerns that:

- there isn't currently a problem because a dispersal order may be in place and if/when that is lifted the situation could change and things could get worse again;
- The area is a beautiful spot, but people can come out of the shop and drink and upset the residents who pay council taxes which pay to maintain the area;
- Because it's near the edge of the CIA zone, it may encourage people to come to this area, away from the town centre;
- The owner could think of something else to encourage her sales.

The Licensing Officer confirmed that there is a Cumulative Impact Policy in place for this area, and while there are different ways of looking at the cumulative impact area, it could be described as being closer to the middle of the area, than the edge, the default position is normally to refuse applications for new off licenses, that's not an absolute policy, a Premises Licence could be issued if the Licensing Sub-Committee felt the applicant had demonstrated that they won't add to the cumulative impact in the area.

In closing the local resident raised the following additional point:

- It doesn't matter if drinks are behind the counter, or if there are restrictions on cans/bottles. People who drink are capable of drinking other items, vodka, whisky etc.

In closing, Mr Botkai raised the following points:

- There's no evidence of a current problem with street drinking in the area, so it appears that the Police are content with the application, by not objecting to it.
- The issues of cumulative impact when the policy came in don't appear to apply now, as the Responsible Authorities did not object.
- The application is limited and the shop will offer a restricted range.
- The conditions prevent purchase of single cans and the range on sale is not proposed to be attractive to budget drinkers.
- Alcohol behind the counter makes it almost impossible for someone to steal alcohol, they have to be served, and if served, they can be refused service, if they are intoxicated.
- If there is a dispersal order in place, the Police would only lift that if they felt that it was no longer necessary.
- The shop isn't as successful as implied, it is struggling and the Premises Licence allows her to attract customers to all of the products on sale.

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The Chair announced that the Licensing Sub-Committee would retire to closed session and make their decision.

### **The Decision of the Licensing Sub-Committee**

The Licensing Sub-Committee decided to grant the application as sought with the following conditions imposed:

#### **- Conditions that could be extracted from the operating schedule in the Application**

- 1) The premises licence holder, DPS, a personal licence holder or a fully trained member of staff authorised in writing by the DPS shall be present at the premises at all times during the permitted hours for the sale of alcohol.
- 2)
  - a) The premises licence holder shall ensure that a CCTV system is installed in the premises of a standard acceptable to the Metropolitan Police Service. The system shall be maintained in good working order & fully operational covering all internal areas of the premises to which the public have access and also the area immediately outside the premises. All entry and exit points shall be covered enabling frontal identification (full head and shoulders images), of every person entering the premises in any light condition to an evidential standard.
  - b) All staff will be fully trained in the operation of the CCTV system including the ability to download screenshots and images for Police or Authorised Officers on request. A minimum of one such member of staff fully trained in the operation of the CCTV system shall be on duty at all times that the premises are open to the public.
  - c) The CCTV system will have the capability to download footage onto a disk or memory stick. The footage of the CCTV system will be retained for a minimum period of 31 days before re-writing itself with the correct date and time showing. Screenshots and CCTV footage will be made available to Police or Authorised Officers immediately upon request.
  - d) If the CCTV system is broken the premises licence holder shall notify the Licensing Authority and Police Licensing Team as soon as possible and get the fault rectified as soon as practicable.
  - e) The premises licence holder shall ensure that a log is kept in the Incident Book with the details of the dates of all work / repairs carried out on the CCTV system including the name and phone number of the engineer.
  - f) On a minimum daily basis the premises licence holder / DPS will check that the CCTV system is operational and the date and time stamp are correctly set and on a minimum of a weekly basis, check that the CCTV system is also correctly recording images for a minimum of 31 days and that screenshots and footage can be correctly downloaded. Details of these checks are to be recorded in the appropriate section of the Incident Book.

- 3) An Incident Book shall be kept at the premises and made available to the Police or Authorised Officers, which will record the following:
- All crimes reported;
  - All ejections of customers;
  - Any complaints received and the outcome;
  - Any incidents of disorder;
  - Any faults in the CCTV;
  - Any refusal in the sale of alcohol;
  - Any visit by a relevant authority or emergency service.
  - Whenever Police are called a CAD number shall be obtained and recorded in the Incident Book.
- 4) Appropriate notices shall be clearly displayed by the entry / exit door and behind the counter advising customers:
- That CCTV and the Challenge 25 proof of age policy are in operation;
  - Of the provisions of the Licensing Act 2003 regarding underage or proxy sales;
  - That no single cans or bottles of beer, lager or cider may be sold in a single transaction;
  - Of the permitted (licensed) hours for the sale of alcohol and the opening hours of the shop;
  - Asking customers to respect residents, to leave the shop and area quietly, not to loiter or drink outside the shop and to dispose of litter legally;
  - That customers may not drink alcohol in the premises;
  - That the shop does not buy alcohol or tobacco goods from unsolicited (cold) callers to the premises at any time and that details of any such unsolicited (cold) callers including CCTV images will be passed to the Police.
- 5) The Challenge 25 proof of age policy will be operated as the proof of age scheme. (See Box E Protection of Children From Harm - Condition 1 for full details.)
- 6) There shall be no supply of alcohol for consumption off the premises except in sealed containers.
- 7) No beers, lagers or ciders above 6% ABV (alcohol by volume) shall be sold at the Premises
- 8) No single cans or bottles of beer, lager or cider shall be sold at the premises.
- 9) No spirits shall be sold in bottles of less than 20cl (centilitres).
- 10) All spirits must be displayed behind the counter and all other alcohol must be displayed in clear line of sight of the counter.
- 11) All displays of alcohol must be specifically covered by CCTV at all times.

- 12) A maximum of 10% of the retail display space may be used for the display of alcohol at any time.
- 13) All alcohol not on display will be stored in a lockable store.
- 14) The premises will actively engage with and work with the local Police Team and the Police and Council Licensing Teams.
- 15) Invoices or copies of all invoices relating to all alcohol and tobacco goods shall be kept on the premises for at least a year after the date of purchase. Alcohol and tobacco must never be purchased from a cold caller to the shop.
- 16) The shop will operate a clear window policy
- 17) Appropriate notices shall be clearly displayed by the entry / exit door and behind the counter.
- 18) Management and staff will proactively discourage persons from drinking or loitering outside the shop both by monitoring the CCTV system & physical checks, politely asking persons drinking or loitering outside the shop to leave the area quietly.
- 19) The shop front will be kept tidy at all times and shall be swept at close.
- 20) No deliveries will be received or removal of rubbish especially glass take place between 20.00 and 08.00 daily.
- 21) A written refusals record will be kept as part of the Incident Book and made available to Police or Authorised Officers on request. The refusals record shall contain details of date & time, description of the person attempting to buy the age restricted products & the products that they were attempting to purchase, reasons why the sale was refused and the name and signature of the person refusing the sale. The refusals book is to be examined on a weekly basis by the premises licence holder / DPS and the date and time of each examination is to be endorsed in the book.
- 22) All staff will be trained for their role on induction and be given refresher training at minimum intervals of six months thereafter. Training will include the operation of the CCTV system and the Challenge 25 proof of age scheme, including identifying persons under 25, making a challenge, acceptable proof of age, making and recording a refusal, avoiding proxy sales, avoiding conflict, responsible alcohol retailing and safeguarding children and vulnerable people.

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

- a) The Licensing Sub-Committee had to make a decision that promoted the Licensing Objectives and that was appropriate and proportionate. The conditions imposed addressed those concerns, including the potential for Cumulative Impact;

- b) The Licensing Sub-Committee had to make a decision on the application based on its own merits, and the refusal of an application for a previous proposed business on the site had little relevance to this decision;
- c) There was no sufficient evidence to connect this business with a problem relating to crime and disorder or public nuisance;
- d) The Police and Trading Standards Officer agreed the conditions, with no ongoing concerns, and under the Guidance they are seen as 'the eyes and ears' of the Licensing Sub Committee;
- e) The Premises Licence is limited in scope;
- f) It was thought that this application will not be one which will cause cumulative impact and can therefore allow an exemption from the CIA policy.
- g) With the grant of a new Premises Licence for this new premises, the Premises Licence would be subject to Review by the Licensing Sub-Committee, if breaches were to occur.



## **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.

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