

# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 19 July 2018

**Subject:** Hopfresh Limited, Unit 3065, Safestore, 67 Gap Road, London, SW19 8JA

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 (March 2015). 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 Sub-Committee considered an application by Rob Stoker on behalf of Hopfresh Limited for a new Premises Licence for Unit 3065 at Safestore, 67 Gap Road, SW19 8JA. The application was for storage and distribution of alcohol to fulfil internet and phone orders.

One representation was received from the Wimbledon E Hillside Residents' Association (WEHRA). It appears that Ms Terrafranca of WEHRA agreed to conditions proposed by the applicant, though did not withdraw the WEHRA representation.

No parties were present at the Licensing Sub-Committee meeting.

The licence was granted with the following conditions:

### Conditions offered and imposed:

- No sale or supply of alcohol shall be made directly from the premises
- CCTV to be operational at the premises.
- Members of the public will not be permitted on the premises at any time.
- At the time the order is placed, full name and address details will be taken and a declaration will be required from the person placing the order to state they are over 18.
- Challenge 25 – on delivery if the driver considers the recipient appears to be under 25 years of age, recognised photographic ID will be requested before any alcohol is supplied.
- The minimum age for delivery drivers will be 18 years of age.

### Conditions offered by and agreed with WEHRA as amended by the Licensing Sub-Committee

1) No retail sale of alcohol shall be made to any customer or visitor to the premises at Hopfresh, Gap Road SW19 8JA.

2) No marketing other promotional events involving alcohol shall to be held in the Hopfresh premises at Hopfresh, Gap Road SW19 8JA

3) No noise disturbance shall occur at the premises that may affect adjoining Safestore units or neighbouring homes (eg: no live or amplified music or similar).

## Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agenda (including the application, the Representation, and additional comments).

The Applicant stated in its application and additional comments that:

- The premises would only be used for picking and packing orders and then dispatching them for distribution. Deliveries would be next day deliveries at the earliest.
- There are a number of online businesses operating under a similar model in the UK. They all have licensed warehouse facilities and identical safeguards in place.
- Mr Stoker had undertaken discussions with the Metropolitan Police and they had not submitted any representation or objection.
- The products sold are premium craft beers which customers consume at home.

The main objections put forward by WEHRA were:

- Wimbledon is well saturated with alcohol premises, alcohol sales on/off premises and any additional premises providing alcohol would add to cumulative impact.

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

- The Committee were satisfied that the premises would not add to the Cumulative Impact in the area and would not affect promotion of the Licensing objectives.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (June 2014).**

#### **12.Appeals**

12.1 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**

12.2 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.

12.3 An appeal has to be commenced by the appellant giving of 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.

12.4 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 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.

12.5 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.

12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

12.7 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.

## **LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE**

12.8 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.

12.9 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**

12.10 It is important that a licensing authority should give 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.

## **IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS**

12.11 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**

12.12 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.