

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Monday 20 June 2022 at 10.00 am at Online/Virtual: please contact andrew.weir@southwark.gov.uk for a link to the meeting and the instructions for joining the online meeting

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sandra Rhule
Councillor Kath Whittam

OTHER MEMBERS PRESENT: Councillor Suzanne Abachor (observing)
Councillor Andy Simmons (observing)

OTHER AUTHORITIES PRESENT P.C. Ian Clements, Metropolitan Police Service
P.C. Graham White, Metropolitan Police Service

OFFICER SUPPORT: Debra Allday, legal officer
Toyin Calfos, legal officer
Andrew Heron, licensing officer
Jayne Tear, licensing responsible authority officer
Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting.

The chair explained to the participants and observers how the virtual meeting would run. Everyone then introduced themselves.

There were no apologies.

2. CONFIRMATION OF VOTING MEMBERS

The voting members were confirmed verbally, one at a time.

3. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were no late and urgent items of business.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: EDEN, 342B CAMBERWELL NEW ROAD, LONDON SE5 0RW

The licensing officer presented their report. It was noted that the environmental protection team and the trading standards team had conciliated with the applicant. Members had questions for the licensing officer.

The applicant addressed the sub-committee. Members had questions for the applicant.

The licensing responsible authority officer addressed the sub-committee. Members had no questions for the licensing responsible authority officer.

The meeting adjourned at 11.09am to allow the applicant to consider whether they wished to run the premises as a restaurant or a café/bar.

The meeting reconvened at 11.19am and the applicant advised that they wished to run the premises as a café/bar.

The Metropolitan Police Service officer addressed the sub-committee. Members had questions for the police officer.

All parties were given up to five minutes for summing up.

The meeting adjourned at 11.32am for the sub-committee to consider its decision.

The meeting reconvened at 12.00pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Henok Tesfamariam for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Eden, 342b Camberwell New Road, London SE5 0RW be refused.

Reasons

The licensing sub-committee heard from the applicant who advised that he had applied for a premises licence between 07:00 and 23:00. At present the applicant supplied coffee and food. Some of his customers who attend the premises have asked for traditional Eritrean alcohol and the applicant indicated that he wished to serve this.

He ran a bar in Eritrea and worked in one in the UK with a friend for approximately a year. It was the applicant's intention to be the designated premises supervisor, but was still undertaking the training for his personal licence. It was not the applicant's intention to provide any dancing, plays or live music. Any music would be played via a television.

The applicant stated that he was happy to accept the operation times for the area as set out in Southwark's statement of licensing policy 2021-2026 and any other licensing conditions the sub-committee imposed. The applicant stated again that he had experience working in licensed premises.

The applicant stated that the tables and chairs were fixed and when asked by members, said that there was a capacity of 15. Through discussion, the capacity figure changed to 25. The food sold at the premises was supplied and transferred from a large restaurant based in Stockwell, frozen in the premises and then reheated. He was essentially selling Eritrean ready meals.

Upon being asked about Southwark's commitment to avoid the use of single use plastics (Southwark's statement of licensing policy 2021-2026, paragraph 205), the applicant advised that the food made in Stockwell was transferred in glass containers and the takeaway food was supplied in plastic containers, foil paper glass and laminate containers. Whilst no representation was submitted from the council's health and safety team, the sub-committee were concerned of this arrangement and the reheating of food in terms of the promotion of public safety licensing objective.

The licensing sub-committee then heard from the licensing as a responsible authority officer who informed the members that the premises was located in the Camberwell district town centre. They advised the sub-committee that Southwark's statement of licensing policy 2021-2026, (paragraph 132) recommended closing times for restaurants and cafes in this area as Sunday to Thursday 00:00 and for Friday and Saturday 01:00. The recommended hours for public houses, wine bars, or other drinking establishments and bars in other types of premises are recommended as Sunday to Thursday 23:00 and for Friday and Saturday 00:00.

They further advised that the premises were also located within the Camberwell cumulative impact area, which applied to premises defined as night clubs, pubs and bars, off-licences, grocers, supermarkets, convenience stores and similar premises. If the premises were to be a true restaurant, then the Camberwell cumulative impact area policy would not apply.

Although the application described the premises as a restaurant/café, to avoid any ambiguity with regards to whether the premises should address the negative cumulative impact if it were to operate as a bar, licensing as a responsible authority sought a condition, which would be consistent with a restaurant. The wording of the condition would be “Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking a substantial table meal and by consumption of such persons as an ancillary to their meal” (the “restaurant condition”).

The licensing sub-committee then heard from the Metropolitan Police Service officer who raised similar objections to the application as the officer from licensing (as a responsible authority). The police officer stated that due to the complete lack of detail within the application, coupled with the applicant’s failure to address the rebuttable presumption created by the premises being in the cumulative impact area, they would recommend that the application be refused.

It was noted that the representations from trading standards and the environmental protection team (EPT) were withdrawn following conciliation with the applicant. However, it was not clear from the EPT’s email withdrawing their representation what hours had actually been agreed (i.e. restaurant hours or pubs/bar hours).

The licensing sub-committee noted the written objection submitted by the ward councilor who was not in attendance at the meeting.

Both the chair of the sub-committee and the legal advisor to the sub-committee explained to the applicant what the cumulative impact area (CIA) for Camberwell meant. They explained that it applied to night clubs, pubs and bars, off-licences, grocers, supermarkets, convenience stores and similar premises.

The applicant informed to sub-committee that he wasn’t agreeable to the “restaurant condition” as suggested by licensing (as a responsible authority). On this basis, the CIA policy for Camberwell would apply.

It was explained to the applicant that, based on the CIA policy for Camberwell, the premises (as a bar) would add to the existing cumulative impact and that the application would be refused, unless the applicant could demonstrate in the application’s operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. The sub-committee asked the applicant to explain this, with particular regard to how the premises would not contribute to crime and disorder and public nuisance within the CIA policy area.

Unfortunately, the applicant failed to address the CIA policy within the operating schedule. At best the applicant referred to the reduced hours he had now accepted and said that he would tell customers to leave the premises quietly. This was far from satisfactory to rebut the presumption, which was dealt with in detail at paragraphs 159-163 of Southwark's statement of licensing policy.

The licensing sub-committee were satisfied that the applicant intended to run a late night bar. In the application the proposed opening hours were Monday to Thursday 07:00 to 02:00 and Friday to Sunday from 07:00 to 04:00 with the sale by retail of alcohol being the same. The late night refreshment hours applied for were Monday to Thursday from 23:00 to 00:00 and Friday to Sunday from 23:00 to 01:00. Even with the reduced hours (Sunday to Thursday until 00:00 and Friday to Saturday until 01:00), the applicant said that he would stop serving food at 22:00 and would not agree to a restaurant condition.

Due regard was given to the general equality duty set out in Section 149 of the Equality Act 2010, the need for an Eritrean premises in the community when balancing the need to eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act; advancing equality of opportunity between people who share a characteristic and those who don't and finally foster good relations between people who share a characteristic and those who don't.

However, the applicant failed to address the four licensing objectives and he did not rebut the presumption to refuse this premises licence application because it was in a CIA.

The sub-committee were referred to R (on the application of Westminster City Council) -v- Middlesex Crown Court [2002] EWHC 1104 in which HHJ Baker adjudicated "Notwithstanding the applicant being a fit and proper person and the premises would be well run a licence could be refused on the sole ground that the area was already saturated with licence premises....and the cumulative effect of the existing premises was impacting adversely on the area to an unacceptable level". Since the premises is located in the Camberwell CIA, this application is refused.

It was unclear to the sub-committee whether the applicant had a language barrier or simply did not understand an operator's obligations under the Licensing Act 2003. The sub-committee recommends that the applicant completes his personal licence training and if he is minded to reapply for a premises licence, employs a licensing agent or legal advisor to assist in the application.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

Appeal rights

The applicant may appeal against any decision:

- a) To impose conditions on the licence
- b) To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- a) The licence ought not to be been granted; or
- b) That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

6. LICENSING ACT 2003: BOULEVARD COFFEE, 224 OLD KENT ROAD, LONDON SE1 5UB

The licensing officer presented their report. Members had questions for the licensing officer.

The applicant and their representative addressed the sub-committee. Members had questions for the applicant and their representative.

The licensing responsible authority officer addressed the sub-committee. Members had questions for the licensing responsible authority officer.

The Metropolitan Police Service addressed the sub-committee. Members had no questions for the police officer.

All parties were given up to five minutes for summing up.

The meeting adjourned at 12.40pm for the sub-committee to consider its decision.

The meeting reconvened at 1.11pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by J & Matt Limited for a premises licence to be varied under Section 34 of the Licensing Act 2003 in respect of the premises known as Boulevard Coffee – 224 Old Kent Road, London SE1 5UB be granted as set out below:

Opening Hours:	Sunday to Thursday: 08:00 to 00:30 Friday and Saturday: 08:00 to 02:30
Sale of alcohol (on the premises):	Sunday to Thursday: 08:00 to 00:00 Friday and Saturday: 08:00 to 02:00
Late night refreshment (on the premises only):	Sunday to Thursday: 23:00 to 00:00 Friday and Saturday: 23:00 to 02:00
Live Music (indoors):	Sunday to Thursday: 11:00 to 00:00 Friday and Saturday: 11:00 to 02:00
Recorded Music (indoors):	Sunday to Thursday: 11:00 to 00:00 Friday and Saturday: 11:00 to 02:00
Performances of Dance and Anything similar (indoors)	Sunday to Thursday: 11:00 to 00:00 Friday and Saturday: 11:00 to 02:00

Conditions

The following additional condition, agreed by the licensing sub-committee shall also apply:

1. That all alcohol to be served at the premises shall be served ancillary to a substantial table meal.
2. That no patron shall be allowed entry or re-entry to the premises after midnight, except for patrons who left the premises to smoke.

3. That this licence will not take effect until an acceptable written dispersal policy has been submitted to the licensing authority.
4. That the written dispersal policy shall be kept at the premises with the licence and made available for inspection by authorised council officers or the police.
5. That all relevant staff shall be trained in the implementation of the dispersal policy.
6. That condition 349 of the current licence shall be removed.

The following recommendation was also agreed to by the applicant:

- That the premises should endeavor not to use single use plastics where ever possible.

Reasons

The sub-committee heard from the licensing officer who stated that the application was for a variation of the current premises licence. He stated that there had been representations from the licensing responsible authority and the Metropolitan Police Service opposing the application.

The licensing officer stated that the objections largely related to the operational hours being outside the recommended times stated in Southwark's statement of licensing policy 2021-2026 for licensed premises in a residential area. When asked by the sub-committee whether the financial obligations of the applicant is a relevant consideration, the licensing officer responded that they were not, as that consideration did not fall within the four licensing objectives. He went on to say, the sub-committee should look at the individual merits of the case and base their decision around the licensing objectives.

The licensing officer confirmed that there had not been any recent complaints raised against the premises and that he had checked for the previous 5 years. He stated that he was unable to check the environmental protection team's database, but noted they had not made representations.

The sub-committee heard from the applicant's representative. He stated that the application concerned an extension of services offered for an additional 3 hours a week in the evenings of Friday and Saturday. He stated that the business had been in operation for approximately nine years with only one previous incident in 2015. He said that the business was the only Bolivian restaurant in the area and was therefore very important to the community. He noted that no resident or neighbour had made representations and opined that the restaurant is professionally managed.

He stated that the premises under the current licence was subject to many robust conditions which promoted the licensing objectives. He went on to say, when the

premises first applied for its licence nine years ago, and the licence was appropriate for that time. He mentioned that the extended hours applied for, was not to get new patrons through the door, but to give those patrons who had arrived at the restaurant after 10pm a chance to eat, drink and unwind. He stated that most of his patrons could not get to the restaurant before 10pm due to work commitments. He also said that the restaurant clientele consisted of 90% Bolivian nationals and 10% other.

The applicant's representative confirmed that he did not expect patrons to enter the premises after midnight and he volunteered that this could be conditioned in the licence. He stated that the premises had applied for a substantial number of temporary events notices (TENs) over the last year, which included extended opening times. He stated that all of the TENs events ran without incident. The applicant stated that he was aware of Southwark's policy in respect of single use plastics and confirmed on behalf of his client that he would endeavor where possible, not to use single use plastics.

The sub-committee heard from the licensing responsible authority officer. Their representations were submitted under the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The officer also raised concerns regarding the fact that the hours applied for were outside the hours recommended in the Southwark statement of licensing policy 2021 - 2026.

The officer stated that the premises was described within the original application as a bar and café and is situated in a residential area. Under the policy, the appropriate closing times for restaurants, cafes, public houses, wine bars or other drinking establishments is 23:00 daily. They stated that the current licence already enjoys generous hours that extend beyond the recommended hours in the policy. The licensing responsible officer noted that the applicant had not offered further control measures to promote the licensing objectives in the new application. She opined that the applicant had not given a reason to the sub-committee to divert further from the policy.

The licensing responsible authority officer noted that there was not currently a restaurant condition attached to the licence and she was concerned that the premises would start to operate as a nightclub. She also noted that she had not received a dispersal policy from the applicant's representative. The licensing officer mentioned that establishment in the area, which had operational hours outside the policy, had those hours agreed before Southwark adopted the statement of licensing policy.

The licensing responsible authority officer was asked by the sub-committee to comment on the large amount of TENs issued to the premises over the previous year and whether this would affect her representations. In essence, she stated it would not, but noted that the refusal of the application to vary, would not preclude the applicant from applying for TENs going forward.

She went on to say that if the variation of the licence were to be granted, her

recommendation would be to condition the last entry of persons at 12 midnight, and state that alcohol should only be sold with a substantial table meal.

The applicant's representative confirmed that the conditions put forward by the licensing responsible authority officer would be workable.

The sub-committee then heard from the Metropolitan Police Service officer, who reiterated the concerns of the licensing responsible officer.

Having heard the representations the sub-committee formed the view that the variation of the licence should be granted.

The sub-committee noted that the establishment was the only restaurant/cafe serving the Bolivian community in the area.

The sub-committee were impressed that the premises were able to operate a large number of TENs, which significantly extended the operational hours without incident the previous year.

The sub-committee also noted that the applicant had also voluntarily accepted further conditions to be added to the premises licence and had agreed to endeavor not to use single use plastics wherever possible.

The sub-committee formed the view that the additional conditions would allay the concerns raised by the Metropolitan Police Service and the licensing responsible authority.

In reaching its decision, the sub-committee had regard to all of the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

Appeal rights

The applicant may appeal against any decision to modify the conditions of the licence; and:

Any person who made relevant representations in relation to the application who desire to contend that:

- a) The variation ought not to be granted; or
- b) That, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the

premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 1.14pm.

CHAIR:

DATED: