

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 18 May 2023 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 Sunny Lambe
Councillor Charlie Smith

OTHER MEMBERS PRESENT: Councillor Ian Wingfield (ward councillor)

OFFICER SUPPORT: Debra Allday, legal officer
Charlotte Precious, legal officer
David Franklin, licensing officer
Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting.

The meeting opened at 10.02am.

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

There were no apologies for absence.

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 none.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: KOMA LTD, 326 WALWORTH ROAD, LONDON SE17 2NA

The licensing officer presented their report. It was noted that the responsible authorities had conciliated with the applicant. Members had no questions for the licensing officer.

The applicant and their legal representative addressed the sub-committee. Members had questions for the applicant and their legal representative. The applicant also called upon a witness, in support of their application, to address the sub-committee.

The sub-committee noted the written representations of two other persons (local residents), objecting to the application, who were not present at the meeting.

The applicant was given up to five minutes for summing up.

The meeting adjourned at 10.48am for the sub-committee to consider its decision.

The meeting reconvened at 11.18am and the chair advised everyone of the decision.

RESOLVED:

That the application made by Maria Jose Bucheli Cordonez for a licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Koma Ltd, 326 Walworth Road London, SE17 2NA be granted as follows:

1. The provision of late night refreshment (indoors):

- Friday and Saturday: 23:00 to 01:30

2. Live music (indoors):

- Thursday: 07:00 to 21:30
- Friday: 17:00 to 22:00

3. Recorded music (indoors):

- Monday to Thursday: 07:00 to 21:30
- Friday: 07:00 to 22:00
- Saturday: 07:00 to 23:00
- Sunday: 07:00 to 21:30

4. The supply of alcohol (on the premises):

- Monday to Thursday: 12:00 to 21:30
- Friday and Saturday: 12:00 to 01:30
- Sunday: 12:00 to 21:30

5. Opening hours:

- Monday to Thursday: 07:00 to 22:00
- Friday and Saturday: 07:00 to 02:00
- Sunday: 07:00 to 22:00.

Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, conditions derived from the operation schedule highlighted in Section M of the application form and conditions agreed during the conciliation process.

Reasons

This was an application for a premises licence in respect of Koma Ltd, 326 Walworth Road, London. SE17 2NA.

The premises was described as follows:

‘The restaurant sells Latin American cuisine, seated 46 people, alcohol is sold to be accompanied by the food’.

The sub-committee heard from the applicant’s representative who advised the restaurant aimed to encourage different cultures and backgrounds of people to enjoy Spanish tapas, wine and Ecuadorian food. They had been operating since 2022 without any incidents, they were very mindful of their neighbours and had clear visible signs and CCTV cameras to discourage and prevent anti-social behaviour.

The restaurant was a family orientated one, families came to enjoy food and have a couple of wines or beers to accompany it. Alcohol would only be served to customers ordering food, no deliveries would occur after 22:00 hours in order to prevent public nuisance and children were not permitted in the restaurant after 22:00 hours.

The premises had applied for later hours on Fridays and Saturdays because families would occasionally book a table for a celebration such as a birthday and would want to stay later than usual to celebrate it. They did not currently offer takeaways but intended to offer this in the future, ceasing at 22:00 hours. They acknowledged Southwark’s statement of licensing policy 2021-2026 in respect of single-use plastics and committed to not using them wherever possible.

A local resident was called as a witness and spoke in support of the application. They considered the premises to be a quiet one that has not been concerned with crime, loud behaviour or rowdiness. She frequently visited the restaurant with her family and found the

venue to be clean inside and outside with no outdoor rubbish.

Two other persons submitted representations in advance of the hearing, the sub-committee gave consideration to these. The sub-committee noted that the police and trading standards, in their position as responsible authorities, had withdrawn their representations after several conditions had been conciliated with the premises.

The sub-committee noted the premises were small, had been operating without any complaints or incidents to date and had agreed to a suite of conditions that would promote the licensing objectives and address the concerns raised by local residents. It is on this basis that the licence was granted.

In reaching this 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:

- 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 desires to contend:

- a) That the licence ought not to have been granted; or
- b) That, on granting the licence, the licensing authority ought not 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: PIZZA HUT, 35 VESTRY ROAD, LONDON SE5 8PG

The licensing officer presented their report. It was noted that the licensing authority had conciliated with the applicant.

The meeting adjourned at 11.31am to allow the licensing officer to check on the status of the representation of the environmental protection officer.

The meeting reconvened at 11.37am and the licensing officer advised that the environmental protection officer's representation was outstanding.

The meeting adjourned at 11.40am to allow the licensing officer to contact the environmental protection officer in order to request that they attend the meeting.

The meeting then reconvened again at 11.45am.

The applicant then addressed the sub-committee. Members had questions for the applicant. The ward councillor and local residents had questions for the applicant also.

The environmental protection officer addressed the sub-committee. The environmental protection officer advised the sub-committee of two conditions to be added to the licence, should the licence be granted. The applicant agreed to these two conditions.

The ward councillor, representing nine other persons (local residents), addressed the sub-committee. Members had questions for the ward councillor.

The sub-committee heard from two other persons (local residents) objecting to the application. Members had no questions for the other persons.

The sub-committee noted the written representations of other persons (local residents), who were not present at the meeting.

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

The meeting adjourned at 1.08pm for the sub-committee to consider its decision.

The meeting reconvened at 1.49pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Nine Food Group Limited for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Pizza Hut, 35 Vestry Road, London SE5 8PG be granted.

Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, conditions derived from the operation schedule highlighted in section M of the application form and the conditions agreed with Licensing as a responsible authority and the following additional conditions agreed by the sub-committee:

1. That the premises shall be closed to walk in customers after 23:00 hours.
2. That the third party on-line food orders shall terminate at 22:45 hours and only on-line Pizza Hut orders after 22:45 hours shall be allowed.

3. That after 23:00 hours all delivery drivers shall wait in the premises for the collection of food.
4. That all external plant required for the operation of the premises (air handling plant, condensers, kitchen extraction systems, etc.) shall be designed, installed and maintained to ensure that noise output from the external plant does not cause a public nuisance or intrude inside the nearest, or most exposed, noise sensitive premises.
5. That any kitchen extraction system required for the operation of the premises shall be installed with an appropriate discharge location (i.e. eaves height) and with adequate odour control filters installed and maintained to ensure that odour emissions do not cause a public nuisance or intrude inside in the nearest or most exposed sensitive premises.

Reasons

This was an application made by Nine Food Group Limited for a premises licence in respect of the premises known as Pizza Hut, 35 Vestry Road, London SE5 8PG.

The licensing sub-committee heard from the operations team manager for the applicant who advised it operated a number of Pizza Hut stores within the M25 area. The purpose of the application was to bring the premises in line with the majority of the other stores within the Nine Food Group Limited group.

They advised that it was quite usual that premises within the group operated until midnight with late night refreshment licences in place.

The applicant had taken on board the views from residents and officers from responsible authorities and it had been happy to reduce the original application from 02:00 hours on Friday and Saturday until midnight, because the area was residential. The premises would close at 23:00 hours, which was earlier than the time suggested by licensing as a responsible authority of 23:30 hours. This would stop people congregating outside the store as customers would not be able to gain access past 23:00 hours. This was in line with the convenience store that operated across the road at 76 Vestry Road.

In the knowledge that local residents complained of noise from the delivery mopeds, the applicant also informed the sub-committee that in all the new Pizza Hut stores they only operated electric vehicles. The applicant stated that they also used other aggregators (i.e. Deliveroo, Uber and Just Eat etc) who used more traditional petrol fuelled vehicles, which the applicant had no control over.

The premises was a collection only site. There was no sit-down restaurant, so if someone wanted a pizza, the front door would be locked at 23:00 hours. Between 23:00 to 00:00 hours the applicant would operate a delivery only service.

In terms of the delivery drivers congregating outside the premises, the applicant advised that the third party aggregator riders would tend to congregate in an area where there were lots of takeaways around, for example Denmark Hill, where there was a McDonald's, a KFC, in addition to a raft of independent operators. Any congregation of aggregators was likely to be there.

The location where the Pizza Hut was situated was tiny in comparison, with only the convenience store that did deliveries. The applicant wanted their own drivers to be as productive as possible, so when they weren't delivering pizzas, they would be in store, sweeping the floor, doing the washing, taking rubbish out, cleaning the walls etc. The bulk of the applicant's trade was between 17:00 and 21:00 hours. Reduced customer numbers later in the evening and even fewer from 23:00 hours would mean that there would sufficient room in the store for the drivers to congregate.

Concerning the residents' concerns of delivery bikes being parked illegally by the pedestrian crossing, making the pedestrian crossing unsafe to use, the applicant was confident any congregation around the pedestrian crossing would have been by third party aggregator vehicles. The applicant's own riders knew they were required to park around the corner. The applicant would also erect a sign in the window of the store to instruct the third party aggregator riders not to park at the pedestrian crossing area and undertake (informal) enforcement of it.

Regarding concerns relating to littering, the applicant advised that pizzas were not the type of food to be eaten 'on the go'. Customers tended to eat at home, taking the pizza boxes with them. Regardless of this, staff would conduct litter picks around the area as part of their closing duties.

The licensing sub-committee heard from the officer from the environmental protection team whose representation was based on the promotion of the prevention of public nuisance licensing objective. Under the statement of licensing policy 2021-2026 the premises was within residential area and the policy recommended that take-away establishments (with a late night refreshment licence) was not appropriate for the area. Since the applicant had reduced its hours, the officer sought conditions relating to noise from the actual mechanical plant, which the applicant agreed to.

The licensing sub-committee heard from the ward councillor, Councillor Ian Wingfield who informed the sub-committee that there had been a total of 32 residents objecting to the application (one of whom had withdrawn). He stated that the premises was located in a residential area, and takeaways were not considered appropriate for the area.

The ward councillor highlighted the representation from other person 1 who had 'hit the nail on the head' when it came to the premises undermining the licensing objectives. The application in respect of Pizza Hut had the highest levels of representations from local residents he had ever known. In the previous 12 months, the ward councillor had noted that one of the primary concerns from

residents was litter and debris fly tipping within that vicinity. The premises, with the hours sought, would add to the problem. It was argued that the terminal hour for the premises should be no later than 23:00 hours, with cleaning up time from 22:30 hours.

The licensing sub-committee heard from other person 26, who suggested that the applicant had been disingenuous when stating that the application was to bring the Vestry Road premises in line with other stores within the M25 area.

Other person 26 stated that the other Pizza Hut outlet were on busier roads, whereas Vestry Road was quiet and residential.

They advised that residents were unhappy with the disturbance and noise that would come with the operation of a Pizza Hut with bikes on the zebra crossing and continuing until the early hours. They added that Pizza Hut was completely different operation from the fish and chip shop previously situated at the location. It would cover a much wider area, because of the delivery service. It was the nature of the delivery service that people were objecting to.

Regarding the rubbish residents complained of, they stated that they had put padlocks on their own bins outside their house so Pizza Hut customers did not use them. This had caused an overflow in the street and the whole area was blighted with a real litter problem.

Other person 30 addressed the sub-committee who advised the application bringing the premises in line with other stores was an irrelevant consideration for the committee. A relevant consideration was the circumstances of the locale. The purpose of the applicant's application should be given little if any weight.

The applicant using their own electric vehicles was welcomed, but the point that the committee needed to consider was how much of a magnet the premises would be at a time (of night) for non-regulated traffic, which the applicant confirmed there was very little they could do about, apart from have quiet words and take informal action.

The conciliated conditions had nothing to do with prevention of matters such as crime and disorder or public nuisance. The conciliated conditions related to logging (for instance, CCTV), rather than have any effect on what was happening outside the premises. Granting the application would result in the continuation of illegal parking (on the zigzags) and littering. Other person 30 urged the sub-committee not to grant the application.

The licensing sub-committee noted the representations from 29 other persons who either did not choose to speak at the hearing or were not present.

This was an application for a premises licence for late night refreshment between 23:00 hours and midnight. The premises would operate for an additional hour with a licence for late night refreshment when it would not be open to the public in any event.

The site of the premises was previously a fish and chip shop. The shop had been refurbished and less pungent smell would be emitted in the locale and fewer customers would congregate outside than before. As a nationwide brand, it was in the applicant's interest to be a good neighbour.

Since the pandemic, the whole hospitality industry has suffered greatly and Pizza Hut would be employing staff from the immediate local area.

Thirty two residents had submitted representations objecting to the application. The members noted the representation submitted by licensing as a responsible authority had been withdrawn after the applicant agreed a number of conditions relating to a reduction in opening hours, the installation of CCTV, staff training, incident recording, delivery drivers turning off their engines and appropriate signage regarding noise nuisance.

Under section 4 of the Licensing Act 2003, a licensing authority must carry out its functions under this Act with a view to promoting the licensing objectives. The sub-committee was sympathetic to the concerns of the residents, but noted that the Licensing Act 2003 was a permissive regime and the sub-committee *must* grant a premises licence if an application is made in accordance with statutory requirements.

The determination of applications are required to be evidence based and justified as being "appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve" (paragraph 9.43, Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003 (December 2022)).

The licensing sub-committee were satisfied that the application, in its amended form, reduced hours and with the conciliated conditions in addition to those added by the committee would promote the licensing objectives.

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:

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The meeting ended at 1.55pm.

CHAIR:

DATED: