

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 14 September 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

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Barrie Hargrove
Councillor Ian Wingfield

OFFICER SUPPORT: Debra Allday, legal officer
Andrew Heron, licensing officer
Mark Prickett, environmental protection officer
Andrew Weir, constitutional officer

1. APOLOGIES

The meeting opened at 10.05am.

The chair explained to the participants and observers how the 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: IBIS STYLES LONDON SOUTHWARK 43-47 SOUTHWARK BRIDGE ROAD, LONDON SE1 9HH

The licensing officer presented their report. 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 chair allowed the other person objecting to ask questions of the applicant and their legal representative.

The environmental protection officer addressed the sub-committee. Members had questions for the environmental protection officer.

The other person objecting to the application addressed the sub-committee. Members had questions for the other person.

The licensing officer then read out a short statement from the ward councillor, objecting to the application.

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

The meeting adjourned at 11.41am for the sub-committee to consider its decision.

The meeting reconvened at 12.11pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Accor UK Economy Hotels Limited to vary a premises licence under S34 of the Licensing Act 2003 in respect of the premises known as Ibis Styles London Southwark, 43-47 Southwark Bridge Road, London SE1 9HH be granted.

Hours

To permit sale of late night refreshment (indoors)	Monday to Sunday: 23:00 to 05:00 This shall be limited to sales to guests and residents of the hotel only.
To permit the sale of late night refreshment (outdoors)	Monday to Sunday: 23:00 to 02:00.

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, the conditions agreed with licensing as a responsible authority during the conciliation process and the following additional conditions agreed by the sub-committee

1. That driver pick up instructions will state that “COLLECTIONS POST 2300 – all collections post 2300 MUST be by e-bike or pedal bicycle ONLY”.
2. That signage will be displayed at the entrance to the kitchen for a period of two weeks prior to the variation being brought in to effect that states “From **insert date** any collections post 23:00 MUST be by e-bike or pedal cycle only”.

Reasons

This was an application made by Accor UK Economy Hotels Limited to vary a premises licence in respect of the premises known as Ibis Styles London Southwark, 43-47 Southwark Bridge Road, London SE1 9HH.

The licensing sub-committee heard from the legal representative for the applicant who advised that the variation application was for the late night refreshment (LNR) of hot food at and the delivery from the Ibis Styles Hotel. The objection to the variation application did not relate to the LNR activity per se, but rather, whether or not the applicant’s proposed delivery service using the access point through the external car park was likely to undermine the licensing objectives.

In advance of submitting the application, there had been pre-application consultation with the responsible authorities in June 2023. In the absence of any comments, adverse or otherwise, the application was submitted on 6 August 2023. The application had attracted four representations and notably, the representation from licensing as a responsible authority had been conciliated with the applicant, where they agreed to nine addition conditions to be added to the licence. Concerning the three outstanding representations, the applicant had engaged in mediation with each.

A management agreement was in place between the applicant and REEF for the operation of the kitchen. Four different brands operated under this: Wendy’s, 800° Degrees Pizza, Coco Di Mama and Ibis Styles Hotel.

The management agreement had been in place since January 2023. Since that time, REEF provided food from lunchtime and would continue to do for the LNR (including home delivery off the premises) element after 23:00 hours.

The hotel calculated the split between room sales, food and beverage and REEF as: Room 92.7%; Food and Beverage internal 6.7% and finally, REEF Revenue to Hotel Nett 0.5%. The provision of food and beverage within the hotel, whether for

consumption on the premises or by home delivery, was comparatively small to the overall operation and was ancillary to the primary purpose and function of the premises as a hotel providing board and lodgings.

Concerning the operation of the takeaway element of the LNR, it was proposed that the collection of deliveries take place from the rear kitchen door, the entrance of which led directly into the car park.

The applicant's representative stated that the change to the current operation was de minimal. A report had been commissioned from 24 Acoustics who concluded with the number of collections on any day between 23:00 and 02:00 with an anticipated ten collections, the majority of which being by bicycle or e-bikes. The predicted noise levels would be lower than prevailing ambient levels and therefore considered acceptable.

When asked why delivery drivers could not pick up from the front of the premises, the applicant's legal representative stated that the question the sub-committee should ask itself is whether the proposed operation could be carried out and promote the licensing objectives and not whether a better place exists.

It was the applicant's view that the proposed operation (i.e. facilitate the deliveries using the car park, primarily through e-bikes and bicycles) as confirmed by the acoustic report was consistent with the licensing objectives. Furthermore, there were security reasons for not using the front entrance in that the hotel front doors close at 23:00 after which, they only open for residents and guests of the hotel.

Since January 2023, the applicant's representative had shown that deliveries were made primarily to Southwark and Lambeth. It was proposed, on exiting the hotel car park a sign would be erected instructing drivers that there would be no right turn onto Thrale Street.

The applicant stated that if their delivery providers verified post 23:00 deliveries being undertaken by non-combustion vehicles, they would agree to the condition.

The applicant also confirmed they were familiar with Southwark's statement of licensing policy in respect of refraining from using single use plastics and confirmed there were no single use plastics in its operation at all.

The licensing sub-committee then heard from the officer from the environmental protection team officer (EPT) who referred to the premises being in a cumulative impact area (CIA) and that there was an automatic presumption to refuse the application.

They stated that the premises were also in close proximity to residential properties whose bedrooms were generally to the rear of the properties overlooking the entrance/exit to the car park. Although the car park was open 24 hours per day, there would be more frequent car/scooter/moped movements with associated engine noise that would generate noise disturbance and public nuisance after 23:00 (during nocturnal hours) through to 02:00, seven days a week.

The acoustic report provided by the applicant stated that a noise level of 73 decibels would occur when a two wheel petrol vehicle passed the closest residential and assumed bedroom window, approximately five metres from the entrance of the rear car park. Noise guidance provided that anything over 45 decibels could potentially disturb sleep. This was particularly so given the barrier to the car park would provide an acceleration point for vehicles when they entered and exited the car park. The officer contended that the takeaway facility after 23:00 should be via the front entrance to the premises as this would reduce the potential of public nuisance.

The licensing sub-committee heard another person who was the freehold occupier and freehold owner of a property on Thrale Street, London SE1, adjacent to the car park at the rear of the hotel.

They objected to the application on the basis that Thrale Street was a residential street located in a conservation area. Being in a conservation area, the properties on Thrale Street were Grade II listed where residents were not permitted to install double glazing or improve the acoustic performance of the windows, which would have mitigated the effect of increased street noise. Therefore, the properties were noise sensitive.

Reference was made of EPTs calculation of 20 vehicle movements (which could increase) after 23:00, which would most certainly impact on residents' ability sleep. The resident also had little confidence in the applicant's "no right turn rule" and stated that it would likely be completely ineffective.

The licensing sub-committee heard from the licensing officer who read a written statement from the ward councillor, Councillor Watson who was unable to attend the hearing.

This was an application for the variation of a premises in respect of a hotel. Under paragraph 149 and 150 of Southwark's statement of licensing policy 2021-2026 (SoLP 2021-2026), the premises is situated in the Borough and Bankside cumulative impact area (CIA) where the classes of premises within the area which the policy applies is night-clubs/public houses and bars/restaurants and cafes/off-licences, supermarkets and grocers.

This application is slightly unusual in that it was for the late night refreshment for hotel guests on the premises and takeaways off the premises. Neither hotels nor takeaways are subject to the CIA policy, therefore the CIA does not apply.

In EPT's representation, the officer referred to planning consent being rejected as an ancillary usage of the hotel and that a full planning application for a change of use would be required. The sub-committee were reminded by the applicant's representative that that licensing and planning were two separate regimes. Whilst the sub-committee accepted this, it also felt it important to refer to the planning regime, but only with regard to paragraphs 100-103 of SoLP 2021-2026, in particular:

"103.Premises operating in breach of their planning permission would be liable to prosecution under planning law. This is emphasised by the decision in the

case of Gold Kebab v Secretary of State for Communities and Local Government 2015".

The applicant's representative also referred the sub-committee to the case of R (Daniel Thwaites) v Wirral Borough Magistrates Court [2008] EWHC 838 (Admin). They stated that the sub-committee are not permitted to speculate when determining the application and that the determination should be evidence based, justified and proportionate for the promotion of the licensing objectives (paragraph 9.43, Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (July 2023)).

The sub-committee have, however, drawn fair inferences from the evidence provided by EPT and the local resident, which it is entitled to do. The sub-committee had particular regard to:

- i. The premises is located in a conservation area where the residential properties are Grade II listed making them noise sensitive as a result of the prohibition to install double glazing.
- ii. The delivery provider's vehicles having a prospective 20-movements each night with two acceleration points per vehicle (at the entrance/exist of the car park barrier).
- iii. Noise guidance provides anything over 45 decibels potentially disturbed sleep. The acoustic report referred to vehicles causing a noise level of 73 decibels.

The approach suggested by the applicant of educating the delivery provider's drivers, followed by a "one strike, you're out" and then penalising delivery drivers, could not reasonably be enforced under the licence. For this reason, the sub-committee were not minded to agree with this proposal.

The other person is also reminded that should there be concerns regarding the management of the premises or compliance with the take away conditions, they have a right to call the premises licence in for a review, when ultimately, the licensing sub-committee could revoke the premises licence.

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 to modify the conditions of the licence; and

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

- a) That the variation ought not to have been made; 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 12.16pm.

CHAIR:

DATED: