

IN THE MATTER OF:

A PROPOSED hub BY PREMIER INN, 86 BRICK LANE, LONDON E1 6RL

HEARING: 3 March 2015

WHITBREAD GROUP PLC

APPLICANT

SKELETON ARGUMENT ON BEHALF OF THE APPLICANT

1. This is an application for a new Premises Licence pursuant to Section 17 of the Licensing Act 2003 for a proposed c. 189 bed hub By Premier Inn at the above location.
2. A hearing is required only as representations have been received by a number of local residents (see below).
3. The applicant is Whitbread Group Plc which operates about some 700 licensed premises nationwide. These comprise either stand alone Premier Inn Hotels (of which there are almost 300) or Premier Inn Hotels combined with a pub restaurant operation (of which there are some 400) - in this case, a stand-alone hotel is proposed of which there are already a number operating within Tower Hamlets Licensing District and without apparent difficulty (Aldgate and Tower Hill).
4. The proposed hub by Premier Inn is a derivation of the well known Premier Inn brand of which a number are now under development and the first of which has opened (St Martin's Lane, London). It represents a capitalised investment

by Whitbread of some £18 million and will lead to the creation of some 35 – 40 jobs.

5. Whitbread are responsible and experienced operators of licensed premises (the majority in town or city centre locations) with robust systems in place for the exercise of due diligence to ensure their premises are properly and responsibly run in accordance with the law and to ensure the avoidance of the commission of regulatory offences and the possibility of public nuisance in particular.
6. The nearest residents likely to be affected by the proposed development will be those residents who are staying in the hub By Premier Inn. Whitbread offer a "good night guarantee" to such customers under which a customer is refunded the cost of their accommodation if their night is disturbed. The amenity of their customers and particularly hotel residents is a paramount concern and priority.
7. As a development site, these premises have yet to be developed but upon completion and before opening, a Designated Premises Supervisor will be appointed, a Senior Manager of the premises with appropriate qualifications and all staff will be trained as part of Whitbread's national development programme.
8. What is proposed here will be a Hotel facility with a limited food and beverage offering ground floor level, as shown on drawing 3356/L/100; attached at Appendix 2. Any sales of alcohol will be by way of waiter / waitress service; there is no bar servery as such. No off-sales are intended from the licensed part of these premises save for consumption by residents in their unlicensed bedrooms. There will be no overt promotion of the food and beverage facilities within the proposed hotel; the premises will be marketed and signed as a hotel.
9. The capacity of the licensed part of the premises will be less than 50; a very limited range of alcoholic products will be available and is likely only to include premium priced bottled beers (£3.75), cider (£4.35), wine (£6.90 250ml

glass), pre-packaged spirits and mixers (£3.95) and premium soft drinks such as Fentimans and Breckland Orchard (£2.85).

10. The application as originally lodged indicated licensable activities taking place from Monday – Sunday 10.00 – 00.00 with the premises closing the general public 30 minutes thereafter. However, the premises would remain open 24 hours a day to Hotel residents. This is the norm for an application such as this. In the course of the consultation period, it was confirmed that the hours applied for, for licensable activity for non-residents would be amended so as to fall within largely the framework hours for the Council, namely 10.00 – 23.30, with premises closing to non-residents 30 minutes thereafter. That is the intention. Non-standard timings in the case of bank holidays and News Year Eve has also been withdrawn.
11. The Police recommended an additional condition beyond those offered by the applicant, in respect of CCTV. See paragraph 3.5 of the Committee report.

This additional condition was accepted by the Applicant and on that basis any police representation has been withdrawn. There are no representations outstanding from any Responsible Authority.

The Law

The Licensing Objectives.

12. Central to the statutory regime are the four licensing objectives which are the only relevant areas for consideration in licensing applications. They are as follows :
 - Prevention of crime and disorder.
 - Public safety
 - Prevention of public nuisance.
 - Protection of children from harm.

The Guidance

13. Under Section 182, the Secretary of State is required to issue Guidance to Licensing Authorities on the discharge of their functions under the Act. Section 4(3) requires Licensing Authorities to have regard to the Guidance.

14. So whilst the requirement to have regard to the Guidance is binding on Licensing Authorities, paragraph 1.9 of the Guidance recognises that :

"This Guidance cannot anticipate every possible scenario such as circumstances that may arise and, as long as Licensing Authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an Appeal or Judicial Review and the reasons given will then be a key consideration for the Courts when considering the lawfulness and merits of any decision taken".

15. Although the Guidance cannot be said to have statutory force, those parts of the Guidance which express the key aims and objectives of the legislation must have significant regard paid to them because any decision which undermines the legislative scheme may be found to be unlawful (*Padfield –v- Ministry of Agriculture, Fisheries and Food (1968) AC997: R (on the application of British Pub & Beer Association) –v- Canterbury City Council (2005) EWHC 1318 Admin*).

The Application Process

16. Section 17 sets out the procedure for making a Premises Licence Application and Section 18 sets out the provisions for determination of that application where representations have been made by the Responsible Authorities or other persons.

17. Section 18 provides that where an application for a new Licence is properly made, following receipt of relevant representations, the Licensing Authority

must hold a hearing following which it may, if it thinks it is necessary, take one or more of the steps set out in Section 18(4) as follows :

(a) to grant the Licence subject to :-

- (i) the conditions mentioned in sub-section 2(a) modified to the extent the Authority considers appropriate for the promotion of the licensing objections; and
- (ii) any condition must under Section 19, 20 or 21 be included on the Licence.

(b) to exclude from the scope of the Licence any of the licensing activities to which the application relates.

(c) To refuse to specify a person on the Licence as Premises Supervisor.

(d) To reject the application.

Conditions

18. The general principles which govern the imposition of conditions upon Premises Licences may be summarised under 4 heads :-

- (1) A condition may only be attached to a Licence if it is appropriate for the promotion of one or more of the licensing objections.
- (2) A condition must not duplicate other statutory provisions.
- (3) The conditions must be proportionate.
- (4) In order to give rise to criminal liability a condition must be framed so as to give precision and clarity for definition in the prescribed Act.

19. Relevant extracts from the Guidance are as follows :-

- (1) Failure to comply with any condition attached to a Licence or Certificate is a criminal offence, which on conviction, is punishable by a fine of up to £20,000 or up to 6 months imprisonment. The Courts have made it clear that it is

- particularly important that the conditions which are imprecise or difficult for a licence holder to observe should be avoided (paragraph 10(2)).
- (2) The Licensing Authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied that as a result of a hearing (unless all parties agree that a hearing is not necessary) that it is appropriate to impose conditions that promote one or more of the four licensing objectives (10.8).
 - (3) It is possible that in certain cases where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives (10.9).
 - (4) The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. **Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing Authorities and other Responsible Authorities should be alerted to the indirect costs that can arise because of conditions Licensing Authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives** [Our emphasis] (10.10).
 - (5) The determination of the licensing committee must be evidence based on what is before them (9.42 and Daniel Thwaites PLC v Wirral Borough MC [2008] EWHC 838)

The role of the Police

20. At paragraph 9.12 of the Guidance it is stated that in their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able

to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

It is of course the case that there is no outstanding Police representation, the applicant having accepted the additional condition proposed, as above.

Residential Representations Received

21. The residential representations received, to the extent that they are relevant to the licensing objectives, appear to centre on a perceived concern that the use of these premises will lead to a potentially detrimental effect on the amenity of those in the vicinity, and particularly (and almost exclusively) a concern about allowing a new off sales facility in the area (which is not the intention of the application).
22. In its amended guise, the application is effectively limited to framework hours as adopted by the Council (indeed less than the terminal framework hour on a Friday and Saturday); most importantly off-sales are limited to those residents wanting to take drinks from the licensed area into their unlicensed bedroom with no intention that there should be any off-sales of alcohol for consumption outside of the premises themselves. Non-residential use (not in fact complained of) will be very limited but is an important component found in almost all similar developments
23. The immediate geography of this proposed development is relevant. The relative "tranquillity" of this location should not be overstated in terms of any perceived impact of this proposed development.

24. It will be noted that some of residents' bedrooms are located immediately adjacent to and above the proposed food and beverage provision at ground floor level.
25. Analysis of Hotel person movement in similar developments operated by the applicant shows that the Hotel related movements has a characteristic profile whereby guest activity is higher during the morning period as guests generally leave the Hotel and during the late afternoon and early evening period when guests arrive for check in. The Hotel activity reduces over the evening and late evening period to a minimal level. There is a noticeable reduction in Hotel activity during the late evening (at a comparable site) comprising in the region of 34 two-way person movements between 10.00pm and 11.00pm with just 12 two-way person movements between 11.00pm and midnight. This level of activity equates to 6% and 2% respectively of all observed person movements.
26. It will be seen that following receipt of the representations, an email of clarification of the application was sent by us through the council to all objectors. See Appendix 10 to the Committee report. This led to the withdrawal of three of the eight original representations received.
27. In summary:
- a. The applicant is a well known and respect operator of Hotel style premises, all of which are licensed on a similar basis.
 - b. The amenity of their own residents is of paramount importance and the management of the premises will be designed to ensure minimum impact upon those residents and indeed any other residents within the neighbourhood. Off sales will not be allowed from the premises, save for consumption in the hotel bedrooms.
 - c. No evidence is or can be put forward specific to this proposed development that problems and disturbance will indeed occur. Indeed evidence from other operations of the applicant indicate that problems and disturbance do not occur.

- d. No evidence is or can be advanced or is otherwise available that Whitbread are not a responsible operator or that they do not have in place effective and credible due diligence policies to ensure the proper management of their hotel premises.
- e. There is no evidence available to suggest that there is or will be a significant problem of crime and disorder or public nuisance in this area sufficient to justify either the refusal of the Licence, the imposition of additional conditions not otherwise agreed or that the development of a hub by Premier Inn at this location will add to or aggravate any perceived problems which may exist.

A handwritten signature in black ink, appearing to be 'JG', written over a faint circular stamp.

John Gaunt & Partners

February 2015

Annexures:

1. Photos of St Martins Lane hub (Ground floor operation)
2. Ground floor licensing drawing

IN THE MATTER OF:

A PROPOSED hub BY PREMIER INN, 86 BRICK LANE, LONDON E1 6RL

HEARING: 3 March 2015

WHITBREAD GROUP PLC

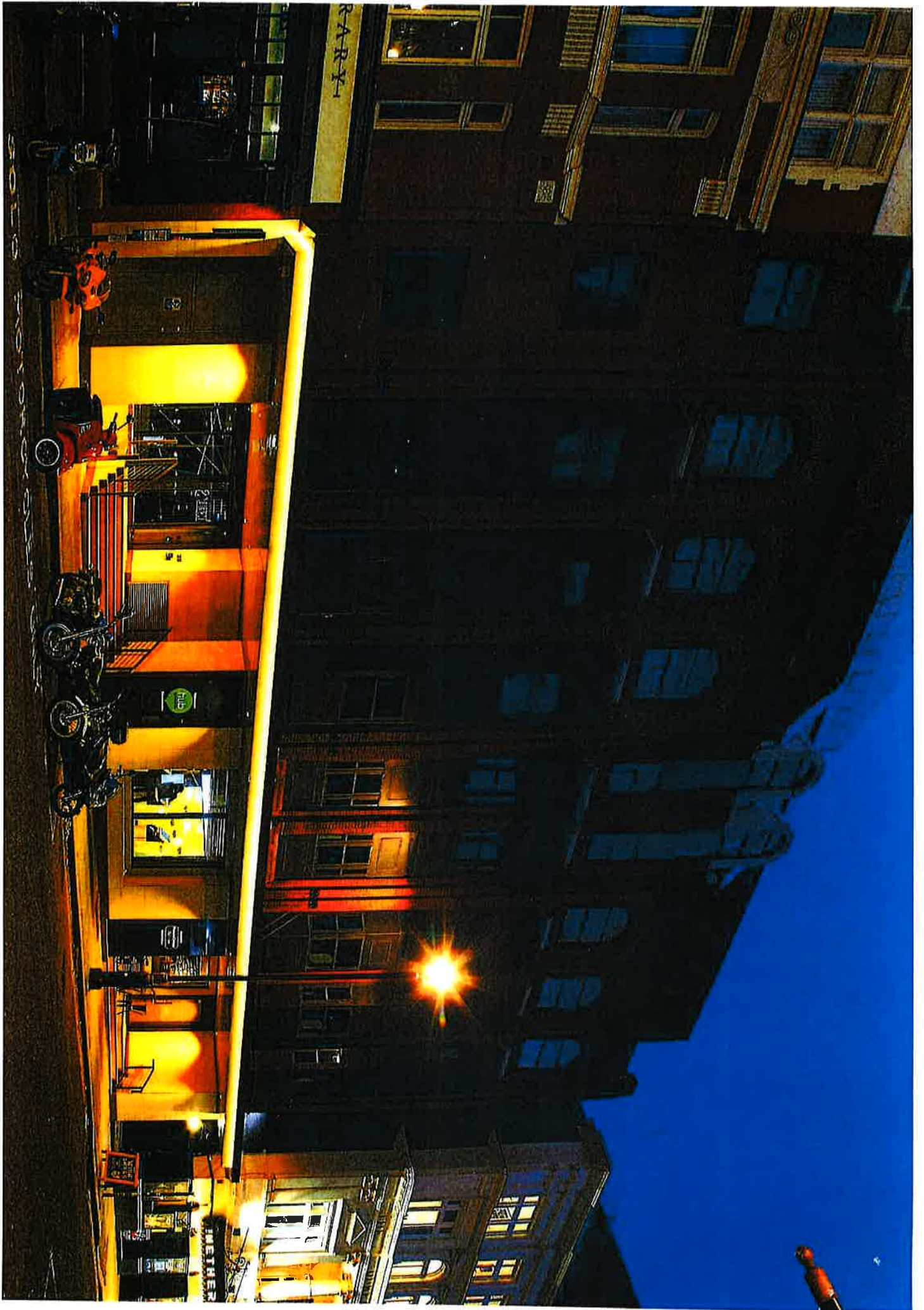
APPLICANT

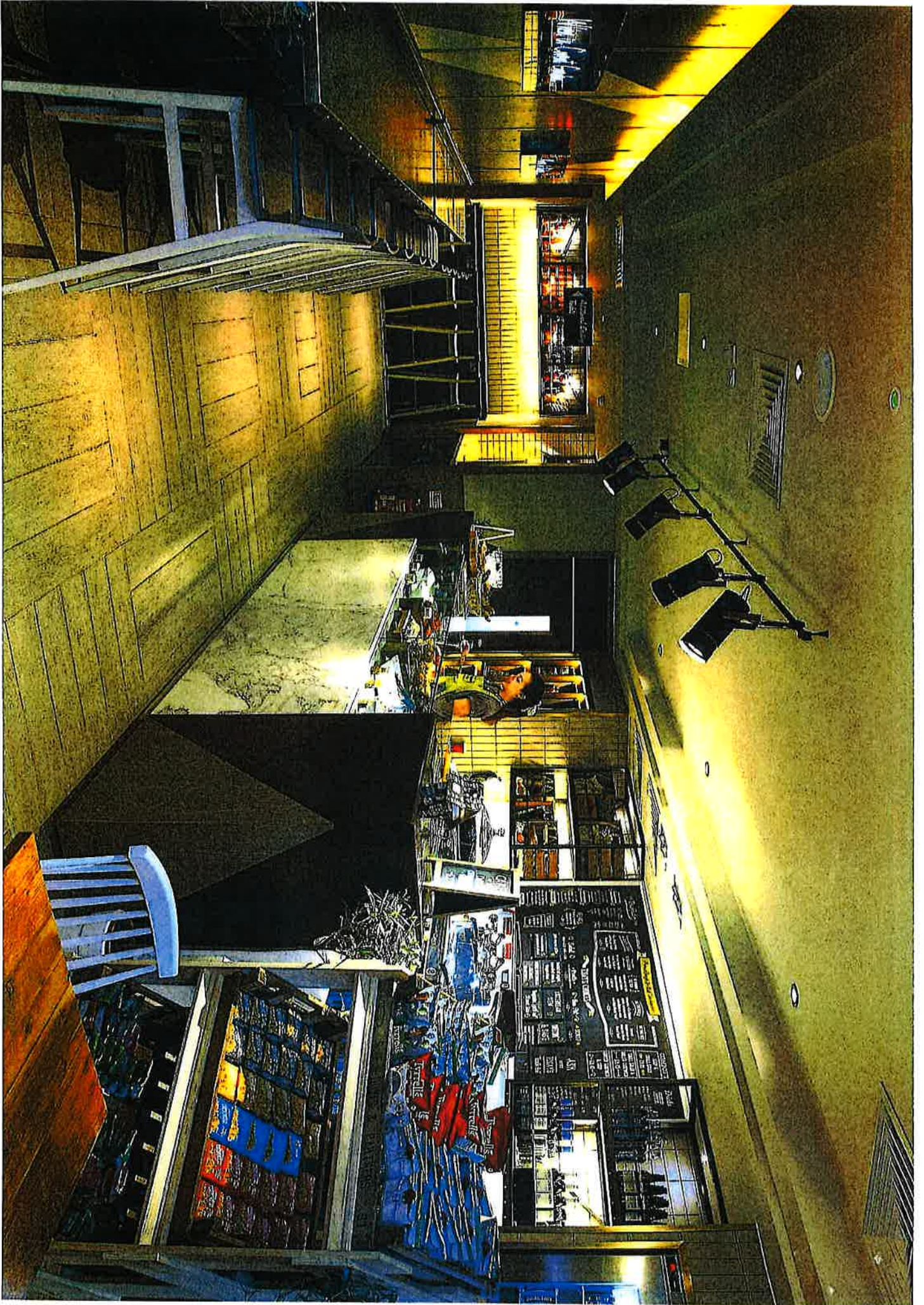
SKELETON ARGUMENT ON BEHALF OF THE APPLICANT

ANNEXE 1

**PHOTOGRAPHS TAKE FROM hub BY PREMIER INN
ST MARTIN'S LANE LONDON**

INDICATIVE OF THE TYPE OFFERING / FACILITIES









IN THE MATTER OF:

A PROPOSED hub BY PREMIER INN, 86 BRICK LANE, LONDON E1 6RL

HEARING: 3 March 2015

WHITBREAD GROUP PLC

APPLICANT

SKELETON ARGUMENT ON BEHALF OF THE APPLICANT

ANNEXE 2

LICENSING DRAWING – 3356/l/100 [GROUND FLOOR]

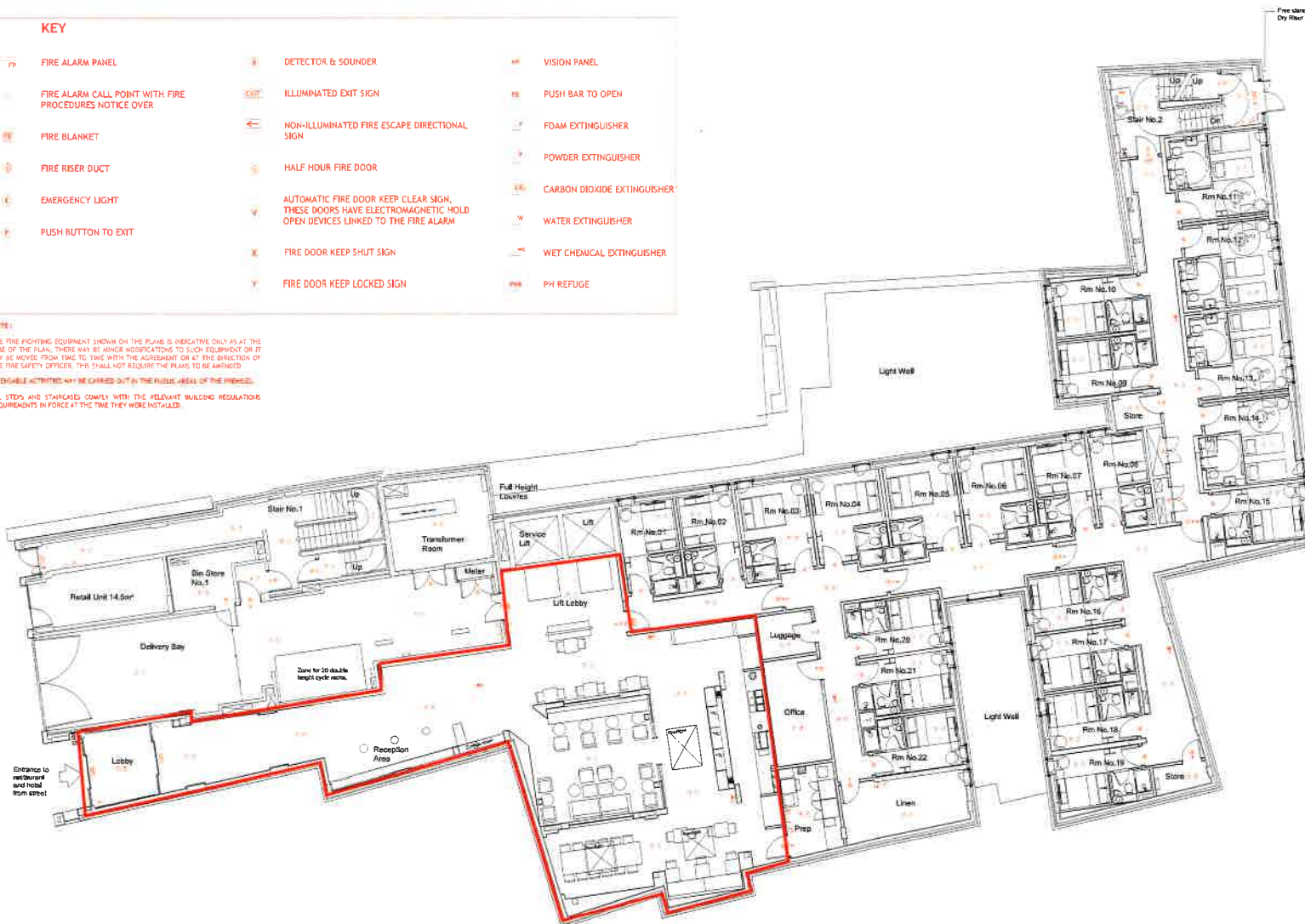
KEY			
	FIRE ALARM PANEL		DETECTOR & SOUNDER
	FIRE ALARM CALL POINT WITH FIRE PROCEDURES NOTICE OVER		ILLUMINATED EXIT SIGN
	FIRE BLANKET		NON-ILLUMINATED FIRE ESCAPE DIRECTIONAL SIGN
	FIRE RISER DUCT		HALF HOUR FIRE DOOR
	EMERGENCY LIGHT		AUTOMATIC FIRE DOOR KEEP CLEAR SIGN. THESE DOORS HAVE ELECTROMAGNETIC HOLD OPEN DEVICES LINKED TO THE FIRE ALARM
	PUSH BUTTON TO EXIT		FIRE DOOR KEEP SHUT SIGN
			FIRE DOOR KEEP LOCKED SIGN
			VISION PANEL
			PUSH BAR TO OPEN
			FOAM EXTINGUISHER
			POWDER EXTINGUISHER
			CARBON DIOXIDE EXTINGUISHER
			WATER EXTINGUISHER
			WET CHEMICAL EXTINGUISHER
			PH REFUGE

NOTE:

THE FIRE FIGHTING EQUIPMENT SHOWN ON THE PLANS IS INDICATIVE ONLY AS AT THE TIME OF THE PLAN. THERE MAY BE MINOR MODIFICATIONS TO SUCH EQUIPMENT OR IT MAY BE MOVED FROM TIME TO TIME WITH THE AGREEMENT OR AT THE DIRECTION OF THE FIRE SAFETY OFFICER. THIS SHALL NOT REQUIRE THE PLANS TO BE AMENDED.

LICENSABLE ACTIVITIES MAY BE CARRIED OUT IN THE PUBLIC AREAS OF THE PREMISES.

ALL STAIRS AND STAIRCASES COMPLY WITH THE RELEVANT BUILDING REGULATIONS REQUIREMENTS IN FORCE AT THE TIME THEY WERE INSTALLED.



Rev	Date	Description	By
-----	------	-------------	----

Brooklands Yard
 Southover High Street
 Lewes
 East Sussex
 BN1 1HU

Tel: 01273 479259
 www.axiomarchitects.co.uk

Client:
 WHITBREAD GROUP PLC

Project:
 HUB by PREMIER INN
 BRICK LANE
 SPITALFIELDS

Drawing:
 DRAWING TITLE 1
 GROUND FLOOR
 LICENSING LAYOUT

Scale	Drawn	Date	Drawn	Checked
1:100 @ A1	FOR APPROVAL	8/12/14	rt	rt

Drawing No. Revision

3356/L/100

AXIOM
 ARCHITECTS