

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 6 October 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 Barrie Hargrove Councillor Andy Simmons
OTHERS PRESENT:	P.C. Ian Clements, Metropolitan Police Service P.C. Mark Lynch, Metropolitan Police Service
OFFICER SUPPORT:	Debra Allday, legal officer Andrew Heron, licensing officer Mark Prickett, environmental protection officer Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting, reconvened from 18 August 2022.

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: SOUTHBANK NIGHTCLUB T/A/ LA ESTACION 57-59 CAMBERWELL ROAD, LONDON SE5 0EZ

This was a reconvened meeting from 18 August 2022.

The legal representative for the premises raised a number of issues and requested an adjournment to a future date (these are dealt with in the reasons for the decision).

The meeting adjourned at 10.46am for the sub-committee to consider the request for an adjournment.

The meeting reconvened at 11.00am and the chair advised that the sub-committee had decided that there would not be a further adjournment of the meeting to a future date.

The sub-committee adjourned at 11.08am to consider an acoustic report from the premises.

The meeting reconvened at 11.22am.

The members continued their questions of the environmental protection officer.

The chair allowed the legal representative for the premises to ask questions of the environmental protection officer.

The sub-committee heard from two local residents supporting the review. Members had questions for the local residents.

The chair allowed the legal representative for the premises to ask questions of the local residents.

The legal representative for the premises addressed the sub-committee. Members had questions for the legal representative.

The meeting adjourned for a comfort break at 1.50pm.

The meeting reconvened at 2.01pm.

The applicant for the review was given five minutes for summing up.

The meeting adjourned at 2.08pm for a lunch break, at the request of the legal representative for the premises.

The meeting reconvened at 2.41pm.

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

The meeting adjourned at 3.01pm for the sub-committee to consider its decision.

The meeting reconvened at 3.51pm and the chair advised everyone present of the decision.

RESOLVED:

1. Decision

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 submitted by an other person for the review of the premises licence issued in respect of Southbank Nightclub T/A La Estacion, 57-59 Camberwell Road, London SE5 0EZ, and having had regard to all relevant representations has decided to modify the premises licence as follows:

2. Hours

- **The sale of alcohol to be consumed on the premises**
 - Sunday to Saturday 10:00 hours to 22:30 hours
 - New Year's Eve from 10:00 hours to 04:30 hours the following day.
- **Regulated Entertainment**
 - Sunday to Saturday 10:00 hours to 22:30 hours
 - New Year's Eve from 23:00 hours to 04:30 hours the following day.
- **Opening Hours**
 - Sunday to Saturday 10:00 hours to 23:00 hours
 - New Year's Eve: 10:00 hours to 05:00 hours the following day.

3. Conditions

1. That condition 4AI be amended to read "That the sound limiting device/s shall be set to ensure that the maximum levels of volume and bass permitted by the system ensure any music, speech or song from licensed entertainment is not audible in and residential property above 57-59 Camberwell Road

When the premises are open after 23:00 hours the following conditions will apply from 22:00 hours:

2. Condition 354 (That 'Club Scan', 'Smoke Screen' and biometric monitoring equipment will be installed at the premises and shall be in operation at all times that the premises is in use (Club Scan)

3. Condition 607 (That three (3) SIA registered door staff be employed from 2200 on until 30 minutes after the terminal hour.

4. Reasons

This was an application made under S.51 of the Licensing Act 2003, submitted by an other person for the review of the premises licence issued in respect of Southbank Nightclub T/A La Estacion, 57-59 Camberwell Road, London SE5 0EZ. The application was convened over three days: 2 August 2022, 18 August 2022 and 6 October 2022.

The licensing sub-committee heard from the applicant who informed the members that they had lived above the premises for five years. The flats were built in the in the 1900s and as far as they were aware, there had always been residential properties above the premises.

The applicant stated that they had concern with the representation of one of the other persons supporting the premises (other person 1) who was the owner of the barbers on Camberwell Road, which was approximately 50 metres from the premises. This business would not be open at the height of the operation of the premises (being Friday and Saturday until 05:00 hours) and also, would not be directly impacted by the operating hours of the nightclub.

When approached, the premises licence holder had informed the applicant (and other residents) that substantial soundproofing of the premises had been undertaken in the nightclub. Despite this, the applicant stated that the noise levels remained unbearable and that they were unable to sleep during the times that the nightclub is on. In particular, the music seemed to be hugely amplified at exactly 03:00 hours when the nightclub was operating. On at least every Friday and Saturday the applicant was disturbed by noise.

The licensing sub-committee heard from the representative for the Metropolitan Police Service who advised that whilst the police did not have direct evidence that the premises was causing issues to local residents, they did have evidence that the premises was operating in breach of the licence conditions on 12 June 2022. Further, on 18 September 2020 the premises were found to be operating in breach of the coronavirus regulations.

The licensing sub-committee heard from the officer from the council's environmental protection team (EPT), who was covering the meeting for a colleague. In preparation for the meeting, the officer had examined the EPT database (APP) detailing the complaints against the premises. The complaints could be placed against the name of a licensed premises, an address or against a street. The officer stated that while preparing for the sub-committee, they had found an additional nine complaints.

A number of complaints were made over the previous two years, but due to COVID and officers not being able to enter the premises, the complaints could not be verified.

There was also concern of potentially giving away the location of complainants and their homes. No statutory nuisance was witnessed. When officers did visit a residence above the premises, music was audible inside the bedroom and this would have been deemed intrusive if ongoing repeatedly. The officer also advised that the premises with residential homes above did not suit being a nightclub as it was not sound proofed.

It was also clarified that the role of council's noise and nuisance team (NNT) was to attend premises and make an assessment in respect of statutory nuisance under the Environmental Protection Act 1990. They did not go to licensed premises and carry out compliance visits, nor were their assessments based on the prevention of public nuisance objective to the Licensing Act 2003.

A statutory nuisance would have a higher threshold than that of undermining the public nuisance licensing objective. In addition, nuisance also had a health and wellbeing impact.

It was also noted by the officer that based on some of the representations from other persons, that they choose to leave their homes when they know the club is operating.

If the noise was such that residents were leaving their homes at the weekends, it was reasonable to conclude that there had been a breach of the premises licence conditions: 362 and 4AI. Concerning the sound limiting device, it should be set so that that the maximum levels of volume and bass permitted by the system ensures that any music, speech or song is not audible in nearby residential premises or causes public nuisance. The officer came to a different conclusion to that submitted in the original representation; the premises had caused a public nuisance. This conclusion was as a result of the additional complaints located on the EPT database.

This matter reconvened on 18 August 2022 and members indicated that they wished to see the paperwork in relation to the sound installation works on the property and also the sound limiting device and proposed an adjournment in order for the parties to produce any paperwork they have in relation to that.

At the reconvened meeting on 6 October 2022 the licensing sub-committee heard from the EPT officer who provided an update and confirmed that on 4 October 2022 they and another colleague from EPT attended the premises in line with the request within paragraph 2.2 of the notice of adjournment, dated 2 August 2022.

Concerning the conditions, the officer took the view that conditions 340, 341, 342, 343 and 345 were complied with. However, the officer was of the view that conditions 362 368 and 4AI were not being complied with. The assessment that conditions 362 368 and 4AI were not being complied was based on an incident that had occurred on 2 October 2022 which resulted in a Section 80 Environmental Protection Act 1990 Abatement Notice being served (on 3 October).

Members were informed of the incident that had occurred and in particular, noted that a complaint had been received at 01.55 hours and officers attended the complainant's home at 02.30 hours, when low frequency South American type music coming from the premises that was "loud enough to affect the average person from sleeping" was witnessed. The officer in attendance also noted that "...vibration when I touched the door leading to the bedroom. The style and the high level of the music was maintained throughout the duration of the assessment without any breaks. There was no room to escape from the said noise". The officer therefore deemed the loud audible music to constitute a statutory noise nuisance. The officer considered that the sound limiter installed in the premises was not having the desired effect to prevent public nuisance.

The officer had also considered the acoustic report served by the premises licence holder's representative. The report was from an audio visual consultant and it was the officer's expert view that the report was not an adequate noise impact assessment from a qualified acoustic consultant, who stated that noise levels were still audible on the first

floor.

BS8233 Guidance on Sound Insulation and Noise Reduction for Buildings identified 30 decibels as the level for internal conditions for good sleeping. The acoustic report served by the premises stated that the noise levels from the premises were far above what should be recommended for good internal conditions. In view of this, it was no surprise that a statutory noise nuisance was witnessed and substantial public nuisance is being caused.

Overall, the acoustic report was very light on detail and was not an adequate noise impact assessment and did not look into other aspects of noise, impact and flanking noise and structural noise, etcetera from the building. It wasn't an assessment of the operational noise of the full nightclub.

EPT considered the premises had caused substantial public nuisance to neighbouring residents and if members were not minded to revoke the premises licence, then the hours should be brought back in line with Southwark's statement of licensing policy 2021-2025 of 23:00 hours seven days a week.

The representative for the premises questioned if the noise limiter was set incorrectly. They also suggested that it would be a good exercise (and practice) for the environmental protection team, with the premises, to go to the nearest sensitive receptor (a complainant), and recalibrate the noise limiter, so that a statutory nuisance was not caused.

In response, the officer stated that a DPS/licence holder with a condition about sound not to cause a public nuisance should cooperate with the residents above the premises, who may be impacted, and set the sound limiter themselves, so that the premises did not cause a public nuisance. It was also emphasised that EPT were not a consultancy and did not set noise limiters, in accordance with the polluter pays principle. A licensee should be setting it, as per the condition so that it does not cause public nuisance.

The licensing sub-committee heard from the other person H who was a dentist and worked as an oral surgeon, doing specialist work for the NHS. They were also currently doing a top up medical degree. They advised that they had experienced issues with the premises for approximately four years now, which amounted to noise on a Saturday night starting at 23:00 hours and finishing at 05:00 hours.

The noise, primarily music, was very loud and made it either impossible for them to sleep, or caused them to wake up. Other person H had called the council's noise and nuisance team when they were in their flat. The noise had impacted on their life considerably and they had to work away from where they would normally work. They normally worked in Southwark looking after patients in Southwark but were unable to work on a Sunday because they were unable to sleep. The noise was so bad that they had to stay at other people's homes: their parent's home, or with friends on a Saturday night. They informed the sub-committee that they were unable to enjoy their flat.

Other person H had spoken to the owner/licence holder about the noise disturbance, but the licence holder refused to turn down the music and told them they should contact the council. Other person H had tried engaging with the licence holder, but had been ignored. The licensee blamed the soundproofing, even though other person H's home was two floors above.

The impact of the premises resulted in other person H refitting their flat two years ago, putting in double glazing, acoustic glass and soundproofing underneath the floorboards as

well. They felt as though they had tried everything, but there continued to be a lot of noise and vibration emanating from the premises into the flat and the building generally. Other person H reiterated that they were having to move out of their flat at the weekends and that the weekends that they were at home, it was not possible to sleep. It was a big drain on their physical health and mental health. It was unreasonable to have such loud music to such long hours in a predominantly residential area as well.

To quantify the impact, other person H stated they would normally see around about 30 patients a year for more specialist procedures, but in the past two years they had to decline the work specifically because of the noise and its effect on them.

The licensing sub-committee heard from other person D who stated that the historical complaints relating to the premises going back six years demonstrated that the premises could not remain in its current format. It was not a personal vendetta and that they had previously had a good relationship with the licensee and were sorry to bring this motion against his business. The residents were struggling with the enormous negative impact of not being able to sleep in their own homes on a weekly basis due to the noise from the premises.

Other person D was a GP and was qualified to give evidence that night shift workers had a reduced life expectancy of approximately 10 years; prolonged wakefulness beyond midnight took seven days to the body to fully recover, meaning means residents sleep patterns replicated a night shift worker purely because of the nightclub. Other person D stated that they moved out to stay with friends, family or at a hotel every weekend. They had not complained since December 2021 because they had not been at home over the weekends. They stated that they no longer do weekend clinics in the local GP services as they were too tired and that there had been a loss of earnings to them as a consequence of this nightclub's impact.

To demonstrate the serious impacts the premises was having, other person D was unable to assist with the covid vaccine program (as GP clinic lead in the area). The vaccine clinics could not run without a GP clinically, so their absence was impacting on the resources for the vaccine clinics of the area. Other person D confirmed that regardless of the works at the commercial property above the premises, there hadn't been any change. They would however, be willing to work with the environmental protection team and the premises to set the sound limiter.

The licensing sub-committee then heard from the legal representative for the premises who stated that his client did not have a fair hearing and that the members had shown bias. The review application was a resident led application, not by EPT and no graduated approach had been taken. In the ten months of 2022 there had only been three complaints.

The licensee had relied on EPT's original representation that the premises was not causing a public nuisance, that officers had attended noise complaints and that the noise was not emanating from the premises or it was not a statutory nuisance. The representative was of the view that there was a simple solution and that the noise limiter be appropriately set with the assistance and approval of EPT. The council had a duty of the well-being of all residents and EPT's refusing to work in partnership undermined this principle, when other persons D and H were agreeable for this course of action.

The representative for the licensee disputed the evidence from other person H that his client was defensive and aggressive when asked to turn the music down. The licensee

had competing information in that residents were of the view that the music was causing a nuisance and officer's stating that it was not. The licensee had however engaged with residents as best he could.

When asked about the alleged anti-social behaviour from patrons in the street, the licensee's representative contended that the premises had a dispersal policy and had a graduated approach with regard to dispersal. It was also suggested that there was an illegal pool club in the vicinity (in addition to IBBs), which was subject to its own review application. SIA officers were also employed by the premises that would address any rowdy behaviour during dispersal. They would also address drinking outside the frontage if there were any, which there was not.

During the course of the meetings on 2 August 2022, 18 August 2022 and 6 October 2022 a number of legal issues were raised by the representative for the licensee:

EPT additional evidence

At the initial meeting on 2 August 2022, the representative for the licensee raised concern of new information being referred to by EPT. The officer explained that due to the search undertaken in their database, a number of complaints had were not identified by the officer that had submitted the original representation (dated 6 July 2022). The matter was adjourned to allow for this evidence to be served. A series of questions were also posed by the licensee's representative (letter dated 3 August 2022), which resulted in further evidence submitted by EPT clarifying the position (dated 3 August 2022). These three documents were produced in the supplementary agenda at pages 2-3, 4-6 and 17 respectively.

The sub-committee, having considered the further evidence, agreed to adjourn the meeting of 18 August 2022 (with no evidence heard), so that the premises, with the cooperation of EPT could produce evidence concerning insulation works. The notice of adjournment at page 30 of the supplementary agenda details this.

The representative for the licensee took exception to the "late evidence" produced by EPT concerning the Abatement Notice served on 3 October 2022. The sub-committee were of the view that pursuant to the Licensing Act 2003 (Hearings) Regulations 2005 ("the Hearing Regulations"), this evidence was not late and allowed it to be considered as the evidence went to the very heart of the review application relating to noise.

Metropolitan Police Service additional evidence

Additional evidence was also submitted by the Metropolitan Police Service. This evidence amounted to 53 pages. Although served pursuant to the Hearing Regulations, since the police had already made their completed its verbal representation, the sub-committee were of the view the licensee would have been unfairly disadvantaged if this evidence was accepted. The sub-committee therefore was therefore disregarded the additional evidence and it forms no part of the decision for this application.

Premises licence holder's additional evidence

The representative for the licensee submitted on 5 October 2022 at 16:54 hours, being less than 24 hours before the sub-committee meeting on 6 October. Because not all parties could agree the evidence in advance of the meeting, it was not circulated and technically could have not been admitted as evidence. As with the additional evidence

from EPT, the evidence was requested by the members and went to the crux of the application. The sub-committee therefore allowed this evidence to be considered.

Licensing sub-committee as a remote hearing

Having examined the transcripts from the meetings of 2 and 18 August, the representative for the licensee did not make any specific objection to the meetings proceeding remotely. In his letter 5 October 2022 formal objection was made of a remote meeting and refers to the case of *R (Hertfordshire County Council) v Secretary of State* [2021] EWHC 1093 (Admin).

Southwark as with a number of other local authorities have relied on lawfulness of licensing sub-Committees being held remotely on the basis that the hearings are conducted under the Licensing Act 2003 and the Act does not define how the hearings must be heard (i.e. whether they are in-person or held remotely) albeit they are subject to regulations (the Hearing Regulations), yet each licensing committee may regulate its own procedure and that of its public sub-committees. Further, in the event that this view is misinterpreted, *R (D&D Bar Services Ltd) -v- Romford Magistrates Court* [2014] EWHC 213 (Admin) (the Funky Mojoe case), held that procedural defects did not automatically render licensing decisions invalid. It is a question of whether there has been substantial compliance. This licensing sub-committee was satisfied that notwithstanding the view that remote hearings are lawful, there had been more than substantial compliance with the procedure requirements set out in the Hearing Regulations that the decision would not deem the decision as invalid.

The representative for the licensee raised the Hertfordshire judgment which examined the Local Government Act 1972 and local authorities having “meetings” at a “place” at which the participants are “present” or which they “attend.” The judgment was however, specific to those meetings governed by the Local Government Act 1972, which required legislation to be lawful whereas, licensing sub-committees were subject to the Hearing Regulations. It is of importance that licensing sub-committees continue to be held remotely due to the notable increase in local resident participation and therefore greater transparency in the licensing decision making process.

Turning to the sub-committee’s substantive decision to modify the premises licence, members are satisfied that there has been a graduated approach by Southwark’s NNT/EPT in addressing the issues of noise. The premises were afforded opportunity to ask specific questions of EPT and produce an acoustic report to address questions of insulation.

Unfortunately, the report produced amounted to a two page letter that lacked any detail regarding any works carried. It failed to state whether the specific licence conditions were complied with. It also provided that 37 decibels were measured on the first floor of the residential premises above and “Even though the levels within the empty premises were quite loud, a full venue will reduce the internal sound levels. Any transference to surrounding properties are specifically the 1st floor were almost inaudible in relation to the ambient sound.”

As an experienced licensing sub-committee, it was not satisfied that a full venue would reduce the internal sound level. EPT referred to BS8233 Guidance on Sound Insulation and Noise Reduction for Buildings which identified 30 decibels as the level for internal conditions for good sleeping. Therefore, the premises own expert admitted that it exceeded the British Standard.

The licensing sub-committee found the evidence from the local residents compelling. They described how their home lives were disrupted, particularly at weekends, resulting in two households moving out of their homes over weekends so that they are not blighted by excessive music caused by the premises.

Knowing that the premises was subject to the review application, the sub-committee would have expected that the premises would ensure it was not subject to complaints. Alternatively, a statutory noise nuisance was witnessed by the NNT and an Abatement Notice was served. This makes the sub-committee question the licensee's ability to manage the premises in compliance with the premises licence.

The sub-committee is also satisfied that the licensee was aware of the significant impact the premises operation was having on his neighbours. Abatement Notices has been served in 2016 and 2018. The neighbours has made a considerable number of complaints both to the licensee and the NNT.

The licensing sub-committee gave weight to Southwark's statement of licensing policy 2021-2026, which specifies the premises was in a residential area and the recommended closing times for the area were 23:00 hours daily for restaurants and cafes; 23:00 hours for public houses and that night clubs (with 'sui generis' planning classification) were not considered appropriate. Members took the view that the evidence from the local residents was so compelling, it was important that the premises hours should be curtailed accordingly.

Finally, the sub-committee amended condition 4AI to take into account of the case of Developing Retail Limited (R on the application of) East Hampshire Magistrates' Court [2011] EWHC 618 (Admin) which held that the term inaudible in the vicinity is too vague to be lawful.

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.

5. Appeal rights

This decision is open to appeal by either:

- a) The applicant for the review
- b) The premises licence holder
- c) Any other person who made relevant representations in relation to the application.

Such appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court for the area within the period of 21 days beginning with the day on which the appellant was notified by this licensing authority of the decision.

This decision does not have effect until either

- a) The end of the period for appealing against this decision; or
- b) In the event of any notice of appeal being given, until the appeal is disposed of.

The meeting ended at 3.54pm.

CHAIR:

DATED: