

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 11 May 2023 at 10.00 am at Ground Floor Meeting Room G01B - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Charlie Smith (Chair)
Councillor Sabina Emmanuel
Councillor Kath Whittam

**OTHER
AUTHORITIES
PRESENT:** 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 reconvened meeting from 2 March 2023.

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.

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: PECKHAM FOOD AND WINE, 176 PECKHAM HIGH STREET, LONDON SE15 5EG

It was noted that this item had been withdrawn by the applicant.

6. LICENSING ACT 2003: SOUTHBANK NIGHTCLUB TRADING AS LA ESTACION, 57-59 CAMBERWELL ROAD, LONDON SE5 0EZ

The licensing officer updated the sub-committee. Members had no questions for the licensing officer.

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

The officer from the Metropolitan Police Service addressed the sub-committee. Members had questions for the police officer. The legal representative for the premises also had questions for the police officer.

The environmental protection officer addressed the sub-committee. Members had questions for the environmental protection officer. The legal advisor to the sub-committee also had a question for the environmental protection team officer.

The legal representative for the premises then asked questions of the environmental protection officer. The applicant for the review also had a question for the environmental protection officer.

The sub-committee then heard from other persons supporting the review. Members had questions for the other persons.

The legal representative for the premises requested a short adjournment in order for him to take instructions from the licensee of the premises.

The meeting adjourned at 11.20 am. The meeting then reconvened at 11.45am.

The legal representative for the premises addressed the sub-committee. The sound consultant for the premises and the licensee were also available to take

questions. Members had questions for the legal representative for the premises, the licensee and the sound consultant. Other person H and other person D also had questions.

The sub-committee also noted the written representations from one other persons supporting the review, who were not present at the meeting.

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

The meeting adjourned at 12.42pm for the sub-committee to consider its decision.

The meeting reconvened at 1.33pm and the chair advised everyone of the decision.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 submitted by another 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 having had regard to all relevant representations has decided to modified premises licence.

1. Hours

- The sale of alcohol to be consumed on the premises:
 - Sunday to Thursday 10:00 hours to 22:30 hours
 - Friday and Saturday 10:00 hours to 23:30 hours
 - New Year's Eve from 10:00 hours to 01:30 hours the following day.
- Regulated entertainment:
 - Friday and Saturday 10:00 hours to 23:30 hours
 - New Year's Eve from 23:00 hours to 01:30 hours the following day.
- Opening hours:
 - Sunday to Thursday 10:00 hours to 23:00 hours
 - Friday and Saturday 10:00 hours to 00:00 hours
 - New Year's Eve: 10:00 hours to 02:00 hours the following day.

2. Conditions

1. That condition 4A1 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 that any music, speech or song from entertainment (licensed or otherwise) is not audible in and residential property above 57-59 Camberwell Road.
2. That when the premises are open after midnight the following condition will apply from 22:00:
 - Condition 607 to be amended to read that in the event of the premises operating after midnight until 30 minutes after the terminal hour there should be (3) SIA registered door staff employed from 22:00.

3. Reasons

This was an application submitted by local resident (an other person) under Section 51 of the Licensing Act 2003 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 licensing sub-committee heard from the applicant who relied on the details in their application and the supporting documents submitted. The application was based on the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives.

The decision to submit the application, was not made lightly. They had endured disturbance from the premises over five years. They had approached the licence holder on numerous occasions with a view to resolving their complaints of noise nuisance amicably. Their attempts of an amicable resolution made no difference and the licensee failed to make any changes to the level of noise being experienced.

The applicant had invited the licence holder to visit their home (which is three floors above the nightclub) to witness the level of noise, so that the licensee could understand the extent of the problem, but this was never taken up. There was continued noise over the weekends and was so unbearable that the applicant and family would move out on weekend nights for respite.

The applicant and their family, currently could not sleep and they had no quality of life. Anti-social behaviour including fights breaking out in the street most weekend's nights and following club nights, smashed bottles, litter, defecation on the communal entrance would be found. The premises effected the applicant, their family and the local community enormously.

The licensing sub-committee heard from the Metropolitan Police Service officer who confirmed that they had carried out searches on the police intelligence and recording systems and found on 18 September 2020 police attended the premises and found the premises operating in breach of the Covid regulations in force at the time.

The officer's witness statement of this incident read: "the music level was so high that we had to shout so we asked him to join us outside". The licensee was informed that he could not operate as a nightclub due to the covid legislation and that even if operating as a pub or bar there are restrictions as to amplified music and social distancing. The police warned the licensee that if he continued to operate as a night club he would be issued with a prohibition notice.

In May 2021 a complaint was received from a local resident concerning fighting in the street, shouting and crowds of people causing disturbances. Also an inspection carried out on 12 June 2022 resulted in notification of offences for breaches of the premises licence conditions 288 and 289 (in respect of CCTV not recording), condition 311 (no staff training records), condition 361 (no signage), condition 365 (in respect of Challenge 25). Of note, the inspection on 12 June 2022 was after the review application was submitted (being 28 May 2022).

Two crime reports were also found on the police systems for common assault associated with people either at or outside the premises in June 2020 and also January 2022. The officer also found a number of calls and incidents in the locality of the premises but could not directly link them to the operation of 57-59 Camberwell Road as a number of premises operate in the area.

The licensing sub-committee heard from the environmental protection team (EPT) officer who confirmed that they had reviewed the RBA acoustic report submitted by the licence holder's representative. EPT's initial representation supported the premises licence review and reminded members that the nightclub did not have planning permission (having been refused in 2015). The nightclub use at the premises was both inappropriate for the building and out of keeping in the immediate locality which was classed in Southwark's statement of licensing policy 2021-2016 as being residential. The legal advisor to the sub-committee intervened and remind the officer from EPT and the members that planning was a separate regime to licensing.

The EPT officer's proposition was supported by several witnessed statutory noise nuisances over several years and numerous residential complaints. However, they still had concerns the music levels from the premises could still be heard in the residential flats above which had been witnessed by both the licensee's expert, from RBA Acoustic (section 4 of the report) and the noise officer that had visited the complainant as recently as 5 March 2023.

The most recent sound limiter setting still generated music noise that could be heard in the residential flats above, assessed within the flat as 59B. The noise levels were still highly likely to be louder in flat 59A which was one floor below and closer to the basement premises. Because of this, EPT recommended to the sub-committee a further 3dB reduction across all frequencies from the dance floor of the premises levels within 'Table 1: April 2023 Noise Limiter Setting Levels' from the RBA report. The change of 3dB was the smallest difference in level that could easily be heard by most listeners listening to speech or music. It was a slight decrease in volume. This 3dB reduction would bring the overall level within the premises from 97dBA to 94dBA.

The officer also referred to Southwark's Technical Guidance for Noise (2019) that listed typical internal sound levels for relevant uses. Whilst the premises was not considered suitable to be a nightclub, for bars featuring live or recorded music, the typical internal sound level is stated to be 95dB LAeq (page 23 Southwark's Technical Guidance for Noise (2019),). This level was from 'NANR 92 – Salford University Noise from Pubs and Clubs Final Report for DEFRA (March 2005)'. Section 2.1.1.4 from NANR 92 states: "Many bars playing music had noise levels of 90 – 95 dB LAeq during busy periods. As such the requested reduction to 94dB sits within this stated 90-95dB range.

The officer further noted that no additional structural insulation or other acoustic improvements had been made and the only work that had been done to address the complaints and review application was a reduction in the sound limiter settings. The officer therefore requested a further sound limiter reduction, based on Southwark Technical Guidance for Noise (2019) guidance to appropriately address the prevention of public nuisance licensing objective.

The officer also referred to the numerous complaints of public nuisance from patrons exiting the premises around 04:00-05:00 and the associated health impacts from lack of sleep, stress etc. referred to in the residents supporting representations. The resident's representations also referred to complaints of police and emergency services being called to address patron activity outside the premises at the same time which has further caused public nuisance to the numerous residents above.

The officer further recommended that the only solution to prevent this from reoccurring would be by way of a reduction of the premises opening hours and recommended that the premises licence be brought back in line with the suggested hours provided in Southwark's statement of licensing policy 2021-2026.

The licensing sub-committee noted the written representation from licensing as a responsible authority who was not in attendance at the hearing.

The licensing sub-committee the heard from other persons present at the hearing. Other person D (who was married to the applicant) informed the sub-committee that their home was a flat three floors above the premises. Their property was double-glazed and the neighbour directly below had done extensive soundproofing to their own flat. There was no more soundproofing of their third floor property that could be done.

Due to the continued noise disturbance, they would contact the licensee on a weekly basis to establish if the club would be open on the Friday and Saturday. If the nightclub was open, other person D and their family would leave their home and stay with extended family, friends or at a hotel, as the level of noise and the vibrations from the music are beyond sleeping and lead to significant disturbances.

By profession, other person D was a general practitioner and acutely aware of the health implications chronic sleep deprivation causes on individual's well-being both from a chronic metabolic disease point of view in addition to a mental health point of view. The noise endured by other person D (and their family) was not sustainable. As a direct consequence of the impact the noise endured from the premises, other person D was no longer a GP in the community; they could no longer work weekends. This meant a loss of their earnings in addition to a loss of a medical resource to the Southwark community.

The licensing sub-committee the heard from other person H who supported the review application based on the prevention of public nuisance, the prevention of crime and disorder and public safety licensing objective.

Other person H had been living in his home, above the premises for approximately four years. Other person H stated that they also move out of their home on weekends as the premises affects their sleep and their ability to work the following day. The noise from the premises is loud and vibrations can be felt in their home. This is in spite of refurbished their home in 2019 when further soundproofing was installed. Regardless of this, noise and vibrations from the nightclub are experienced.

Other person H advised that they had approached the premises licence holder and asked that the music down be turned down but was explicitly told the music down would not be turned down, the premise was a nightclub and to contact the council if there were issues.

The premises licence holder was described as being defensive and aggressive when approached. Both the resident and the community was affected. Other person H also referred to the premises patrons causing noise behind the flats of the building. The only effective resolution they could see would be a reduction in the hours of operation, with music ceasing before midnight.

The licensing sub-committee noted the written representations from five other persons supporting the review application who were not in attendance at the hearing.

The representative for the premises referred to the case of Thwaites [2008] EWHC 838 (Admin) imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on evidence rather than speculation.

In terms of EPTs recommendation that the hours of the premises should be brought back in line with policy hours, it was suggested the policy was not relevant as this was not a new premises licence application. It was a matter for the members of the sub-committee to be satisfied on a balance of probabilities that there was evidence to reduce the hours to achieve the licensing objectives. It was also important that such a reduction in hours was proportionate and reasonable.

In terms of the internal noise, the representative for the licence holder stated that he was satisfied that the setting of the noise limiting device did not cause a public nuisance and recommended that the integrity of the EPT officer should be challenged. The initial representation from EPT stated that the premises had not cause any statutory noise nuisance. Now however, the officer stated that the premises had caused statutory noise nuisance and recommended a reduction in hours.

An independent expert (RBA Acoustics) had set the noise limiter, but also, the device could only be accessed by a computer code that was held by the sound engineer, that could change it. There was already a door lobby installed, with one door at street level and another in the basement, at the entrance to the nightclub.

The members of the sub-committee and other persons supporting the review could have confidence and/or trust in the licence holder being unable to change the music level settings. RBA Acoustics were confident that the settings were correct (and could not be altered). They had even carried out a covert visit to check the sound levels. This demonstrated that the noise limiting device was set appropriately. The noise limiting device had been set and the residents were not affected by the noise from the premises.

The representative addressed the point that one of the residents mentioned that they had gone to the premises and asked that the music be turned down, which the licence holder said 'no'. To put this in context, it was an unreasonable request. The licence holder could not turn the music down because it could not go any lower; there was little or no bass being played. The licence holder was working to the absolute bare minimum. The members were therefore asked to consider the credibility of residents' evidence.

It was noted by the sub-committee that the premises had seen a decrease in the number of customers.

Concerning the “external noise”, the burden of proof was on the residents as supporters for the review to demonstrate that the patrons of the premises were responsible for the noise and fights. The police, being the main source of advice on crime and disorder were unable to categorically state the premises had been responsible for any crime or disorder. This left the residents as providing little more than hearsay evidence.

The sub-committee were reminded that the reference by EPT of the planning status with the premises was also not a relevant consideration given that planning was a separate regime to licensing. Furthermore, residents had purchased their properties in the knowledge that the homes were above a nightclub.

The licensing sub-committee noted the written representations from three other persons supporting the premises who were not present at the hearing.

This was an application submitted by local resident or the review of the premises licence issued in respect of Southbank Nightclub T/A La Estacion. The premises operates as a nightclub in an area classed in Southwark’s Statement of Licensing Policy 2021-2026 as residential. The premises is located in the basement of a mixed use building, with residential premises above. The premises has a late night licence Sunday to Wednesday until midnight, Thursday until 02:30 hours and Friday and Saturdays until 04:30 hours.

The resident’s complaints fell into two categories, noise coming from the premises operation and noise and anti-social behaviour from patrons after leaving the nightclub.

Members found the evidence from the residents powerful. The residents spoke of the negative effects the noise from the premises caused; stress and sleep deprivation interfering with their use and enjoyment of their homes for numerous years. Residents chose to leave their homes on weekends when the premises operate in the hope of getting a better night’s sleep. The applicant and their family was now renting elsewhere to escape the constant disturbance from the premises. They do however, hope return to their home on Camberwell Road one day. The residents’ supporting the application consistently demonstrated that they had been disturbed by noise nuisance from the operation of the premises since at least 2016.

The sub-committee noted the complaint log submitted by EPT:

2 October 2022 at 02.30 hours – A Noise Officer visited complainant and made an assessment from the bedroom fully furnished with the double glazed window “...I felt a 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. I therefore deemed the noise (LAM) level to constitute an SNN in my opinion at 02.42 hours". On the balance of probabilities the sub-committee found that the licence holder was conscious that the music was being played too loud manager given that it was reduced so quickly. (Property A, agenda page 119)

29 October 2022 - Call to Noise Team "music playing loud currently. Repetitive music drumming sound has gotten worse the past week. People are always walking in and out talking loudly". (Property G, agenda page 118)

12 November 2022 - 23:44 loud music coming Southbank nightclub (Property A, Agenda page 118)

26 November 2022 - Noise Officer attended 02:41 "loud music could be heard on arrival. Outside the main entrance to complainants communal entry is right beside the fire exit from the club, pounding music escaping from the exit door. In complainant's property, bass beat noticeable.....music stayed the same intrusive level throughout my assessment". A statutory noise nuisance was witnessed at 02.43am. (Property A, Agenda page 117)

7 January 2023 at 23:55 - "The music was not loud though audible in silence 00.08hrs- the music was slightly amplified but the lyrics were blur. I guess over time this could become an issue but on this occasion it was just audible but the complainant alleges that he is unable to sleep in this occasion". Again, because the licence holder manager reduced the volume twice, suggests to the sub-committee that he was conscious that the music was too loud. (Property A, Agenda page 116)

9 January 2023 at 19:03 - "...extremely loud music and thudding from the bass so loud my room shakes. I understand on the high street there will be noise but this is a few floors up where it is completely residential...I can hear people singing, the words, the songs but the main problem is the bass. This is every weekend from 0:00-5:00, I've had to buy many forms of plugs including industrial ear defenders and I can still hear the thudding music and can feel it in my heart". (Property C, agenda page 116)

On 16 April 2016 at 01:52 a statutory noise nuisance was witnessed at the premises and a statutory nuisance abatement notice was served on the licence holder.

On 1 June 2018 at 00:15 a statutory noise nuisance was witnessed at the premises and a statutory nuisance abatement notice was served on the licence holder.

Since February 2019, EPT have reviewed 36 complaints associated with the operation of the premises. The complaints are from seven different

properties concerning noise nuisance from the premises. The complaints were made to both the noise and nuisance team and the licensing unit.

On eight separate occasions since October 2021 they have substantiated that noise from the premises was audible. On two of these occasions a statutory noise nuisance was witnessed. This was not including the two statutory nuisances witnessed in 2016 and 2018.

The licensing unit also issued two formal warning letters (pages 127 and 134 of agenda) for breaches of the licence.

The licensing sub-committee it is conscious that it must promote the licensing objectives in the overall interests of the local community and must give appropriate weight to:

- i. the steps that are appropriate to promote the licensing objectives;
- ii. the representations (including supporting information) presented by all the parties;
- iii. Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)
- iv. Southwark's statement of licensing policy.

The sub-committee were directed to the Revised Guidance issued under section 182 of the Licensing Act 2003 April 2018 which is binding on all licensing authorities. The sub-committee were reminded:

“...that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable” (paragraph 2.15).

“...the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate” (paragraph 2.18).

“For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am” (paragraph 2.19).

The premises licence holder took over the management of the premises in or around 2013 in the knowledge that the premises whilst located on a busy road, in an area that is overall a very busy residential area with young families, children and older people who need to have established sleep

patterns, uninterrupted by noise in the small hours. Despite this, he chose to operate as a nightclub and this has caused continuous disturbance to local residents since at least 2016.

Specific soundproofing was undertaken by the premises required under the licence when it was originally granted. When asked about additional insulation works, the licence holder's representative stated that there had been approximately £6,000 of works 10 years ago, which had been undertaken/overseen by RBA Acoustics.

Additional works had been undertaken in November/December 2022. It was averred no further works were now needed as RBA Acoustics were satisfied that there was no noise nuisance. Unfortunately, the extent of the 2022 works were not disclosed to the sub-committee. The sound limiter was then also set by RBA Acoustics. RBA Acoustics were satisfied that any noise emanated from the premises did not constitute a statutory noise nuisance and indicated that noise levels within the complainant's property were acceptable; "music was only just discernible and did not have any noticeable bass beat".

Residents state that the noise remains unacceptable. The sub-committee were again mindful of the Noise Officer notes from 7 January 2023 in property C. "The music was not loud though audible in silence 00.08hrs- the music was slightly amplified but the lyrics were blur.....I guess over time this could become an issue"

The licensing sub-committee were satisfied that there had been breaches of condition 4A1 of the premises licence that were witnessed and the prevention of nuisance licencing objective was undermined.

The licensing sub-committee considered all of the options available to it, mindful that it must promote the licensing objectives:

- a. Revoke the licence. The sub-committee were satisfied that the licensing objectives could be promoted without the need to revoke the licence.
- b. Suspend the licence for a period not exceeding three months. Because soundproofing works had been undertaken and the noise limiter set, the sub-committee took the view that there was little value in suspending the licence for any period of time.
- c. Remove the designated premises supervisor (DPS). With the exception of complaints of noise, the sub-committee were not satisfied that there was a catalogue of incidents that required the removal of the DPS.
- d. Exclude a licensable activity from the scope of the licence. The residents' complaints were of late night noise nuisance that primarily disturbed sleep. The sub-committee were not satisfied to exclude live

and recorded music at all times. It did however, take the view that it was proportionate and reasonable not to allow late night music for the benefit of the local community.

- e. The sub-committee determine that to promote the licensing objectives, the licence should be modified. The sub-committee are satisfied that the modifications (detailed above) are an entirely appropriate and proportionate response to address the causes of concern that instigated the review application (paragraph 11.20 section 182 of the Licensing Act 2003 April 2018).

These modified hours are appropriate in light of the premises location being in such close proximity to residential properties and are in keeping with Southwark's statement of licensing policy.

Concerning the complaints of noise and anti-social behaviour from patrons after leaving the nightclub, the sub-committee were not satisfied that the premises was solely responsible for this. There was a cumulative effect of having a number of late night licensed premises. The police had the necessary tools to address this. It is hoped that the modification to the premises licence and reduction in licensed hours would sufficiently the late night anti-social behaviour on the streets.

Finally, under Southwark's statement of licensing policy 2021-2026 the premises is located in a residential area and that nightclubs (with sui generis planning classification) are not considered appropriate for this area. The premises licence holder is also reminded that under this policy there is a need to ensure proper integration with the planning regime (paragraph 101). Although not consideration for this sub-committee, the licence holder must regularise this as soon as is practicable.

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.

4. 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 1.39pm.

CHAIR:

DATED: