

Correspondence with environmental protection team APPENDIX B2

From: Earis, Richard <Richard.Earis@southwark.gov.uk>

Sent: Tuesday, July 26, 2022 11:28 AM

To:

Cc:

Subject: RE: With respect to your representation made against Premises License Application 877689

Dear Mr Levitt,

Please find attached a response from EPT to your Counsel's submission on 19th July.

Much of the content was drafted before we discussed the issues during your call yesterday afternoon, but is still included as a formal reply to the points made. I have not amended any content where your comments yesterday do not accord with our records or the submitted documents, but you obviously will be able to give your perspective in any Hearing.

If you would like to discuss any of the content or any aspects of the application further, please do not hesitate to contact me.

Kind Regards,

Richard

Richard Earis

Principal Environmental Protection Officer

Environmental Protection Team

EPT response to Applicant Counsel's Submissions – 32 A B C Penarth Centre.

Complaint History

1. EPT are interested to hear the premises caused complaint from a temporary 'holiday' occupier on 7/12/2019, however we do not have a record of this and this is not the source of the complaint referenced in the EPT representation. The complaint was made to us directly by a permanent occupier.
2. The fact that the complaints were not substantiated as a statutory nuisance was clearly explained in the representation alongside the fact that bass from music and noise from the external area were audible by the Enforcement Officer. This is considered relevant information to bring to the Committee's attention. The full complaint detail (anonymised) is provided in the table in Appendix A.
3. EPT's records show the complaint on 7/12/2019 was raised with the applicant Mr Levitt by an Enforcement Officer in person, at the time, as previously detailed in the representation and in the notes below. According to our records Mr Levitt was advised to turn down the music bass causing the resident disturbance before the Officer left after 2am.
4. The second complaint was not raised with the operator by EPT as it was a generalised complaint about compliance, past impact from the premises, and concern over a future event and was not concurrent with any specific incident.

Existing Occupiers

5. EPT's representation makes clear that Unit 31 has a lawful Planning consent for a residential use and is under residential occupation. It is stated that *'the residential status is to be automatically surrendered when the occupier moves out and, during their residency the occupier forgoes their right to lodge noise complaint'*. Surrender of the residential status after a potential future sale is a Planning Condition. Forgoing the right to lodge complaint is merely an informal undertaking. EPT do not accept this is legally enforceable or can remove the occupier's basic legal right to make complaint, for example concerning statutory noise nuisance under the Environmental Protection Act 1990, or under the Licensing Act 2003, or can override the Local Authority's legal duties under those Acts.
6. Furthermore in any case the Licensing Objective is to Prevent Public Nuisance and as such we have a duty to make a representation on a scheme we believe is likely to cause such a nuisance, regardless of whether a single adjacent occupier foregoes their right to complain.
7. EPT have confirmed with the Planning Authority their understanding of lawful residential uses. There are currently two lawful dwellings within the Penarth Centre. One at Unit 31 and one at Unit 18/33 (a duplex unit). Internal sound transfer is a very significant risk to both.

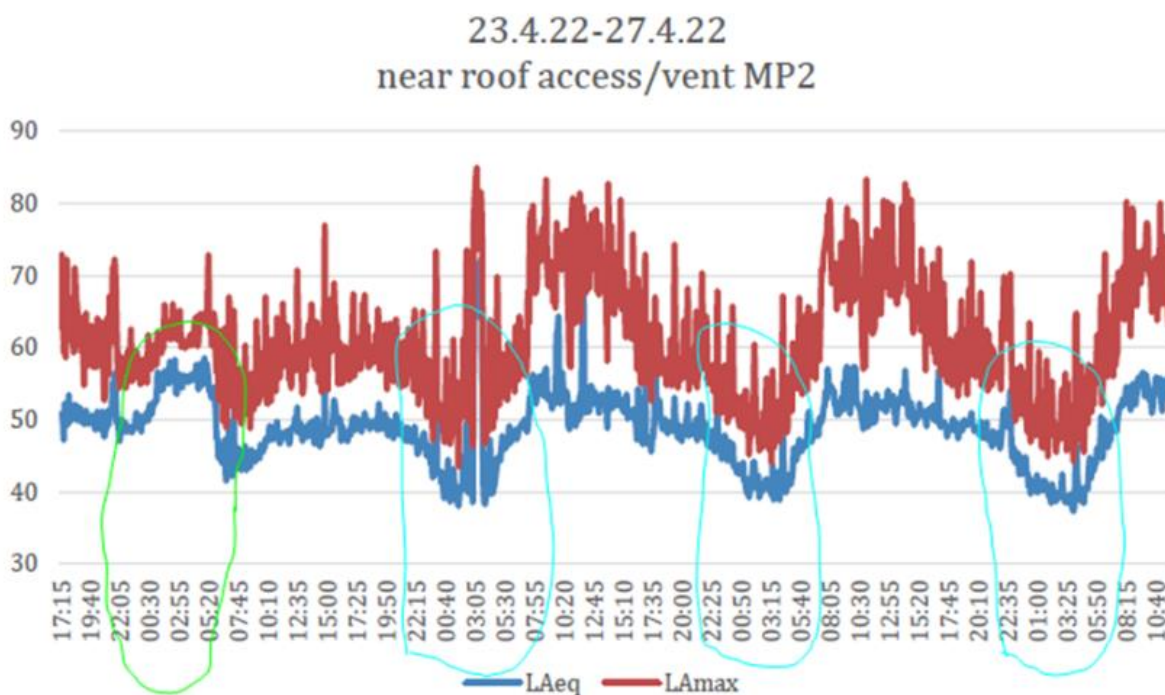
Acoustic Assessment

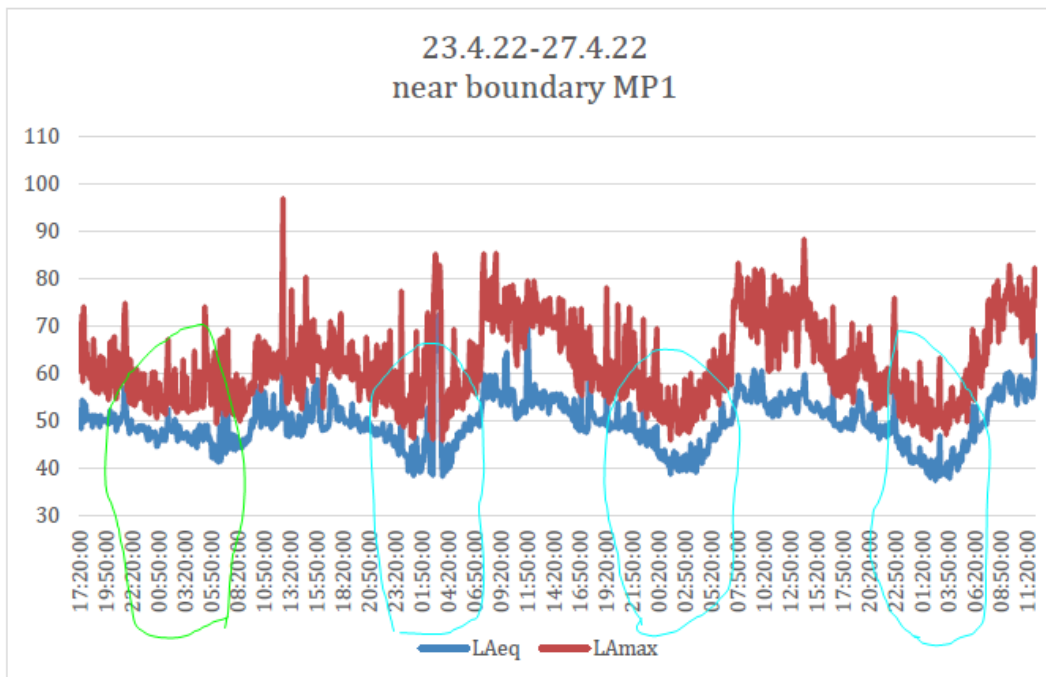
8. No acoustic report was previously provided to EPT as part of the submission documents, or included within the zip file sent to us, and so EPT have had no previous opportunity for comment on this document. EPT are disappointed that a complicated technical report has been submitted at such a late stage giving limited time to respond, alongside a highly misleading statement that EPT 'have not contradicted this acoustic report'.
9. It is EPT's view that the report does not sufficiently assess night time music noise. Specifically:
 - The assessment measures only LAeq. The 'A' weighting subtracts from lower frequencies to try to simulate human auditory response however it is well known this has the effect of underrepresenting the impact of bass frequencies from music. These are precisely the frequencies most likely to cause nuisance from music noise, and those which pass most readily through acoustic insulation. The assessment includes no spectral analysis whatsoever (i.e. breakdown of 1/3 octave bands or individual frequencies to see if specific frequencies are problematic). This means it is impossible to understand whether bass frequencies may be noticeable above background or at such a level as to cause nuisance. This is not sufficient for an assessment of music noise from a permanent club / music venue.
 - No detail is provided as to the nature of the event or the internal music sound level at the time of the assessment therefore we have no objective way of knowing whether the music volume inside was representative of worst-case operations and no way of judging if the assessment is reasonable. From the submitted methodology it does not appear that internal music sound level was measured. A more robust methodology would include simultaneous internal and external measurement with spectral analysis to observe whether noise breakout is occurring and if so calculate its level at residential facades.
 - No detail is provided of the use of the external areas during the assessment including the number of people present at the time and whether it was reflective of worst-case use, or the numbers of people arriving and departing from the venue on that particular date.
 - The assessment provides no way of understanding the breakdown of contribution from external 'people' and internal music noise sources to the total measured level. All sound is treated as one homogenous influence.
 - The assessment compares the 8 hour average music noise from a single event night to the 8 hour ambient levels from four different nights. It is not possible to say with any certainty whether the difference (or lack of difference) in measured level is from unrelated variability in background sound or as a result of the specific noise from the premises. As comparison is specific LAeq to ambient LAeq rather than to L90 (underlying background – the lower level exceeded for 90% of the measurement period) it further

limits the ability to appreciate the likely distinctiveness of music noise in the variable sound environment. For music noise we would usually expect results reported with shorter intervals such as 1 minute or 5 minute averaging times so it is possible to observe in detail the extent to which the specific music noise may be above the ambient level at certain times. All of this detail is lost in an 8 hour average.

- LMAX is reported as the 90th percentile LMAX. There is no explanation given for this or commentary or interpretation of the result for this metric.
- Notwithstanding the above, the assessment shows the 8 hour LAeq from the event night at MP1 was 47dB, the highest measured of the 5 nights assessed, and impactfully (+3dB) higher than the level on two of the other days measured. This may be indicative that the venue is in fact affecting the sound level in this location. This is supported by the graphs below. Without a clearer and more rigorous assessment it is impossible to determine with any certainty or really draw any firm conclusion.
- The assessment tabulates results for MP1 but not for the other monitoring point (MP2). It is unclear why this information has been omitted. Looking at the chart the sound level on MP2 outside the venue roof appears to be very significantly elevated on the event night (see green bubble below) by comparison to the other nights (blue bubbles). The X axis is unlabelled with dates and appears to only show 4 nights whereas 5 are reported so it is difficult to interpret.

Extracts from acoustic report – green bubble added showing presumed event night, blue bubbles added showing non-event nights (axis unlabelled):





- References have been made to acoustic standards which are irrelevant such as BS4142:2014 (which specifically excludes music and entertainment noise from its scope) and standards which are not intended for this type of noise source.

- Overall EPT would not consider the assessment to use an appropriate or rigorous methodology for these types of entertainment noise sources, to omit key detail and rationale, to lack critical analysis and to raise more questions than it answers. It is quite possible that a more robust assessment may resolve our concerns over external transmission of music noise from inside the venue however for the reasons above the assessment currently submitted is of almost no evidential value in demonstrating the suitability of the proposed premises operation.
- It is also important to emphasise that a key concern is noise from dispersal and activity in the streets outside the premises affecting surrounding residents at night. Taxi/car movements, slamming of car doors, radios, use of car horns, shouting/laughing/singing and other such disturbances are common outside late night venues. The sporadic, distributed and irregular nature of this type of noise and lack of a standard accepted assessment methodology mean it is not possible to adequately characterise the wider impact of this in a technical assessment alone.

Relevance of surrounding development

- There is no need for the Committee to speculate that there may be more residential units in future because their construction is an existing reality. 170 residential apartments in two blocks directly overlooking the site or access road are currently in the advanced stages of construction and very close to completion, as shown in photographs submitted in our

representation. The closest block is an affordable Housing Association scheme more likely to be occupied by vulnerable people and families. Occupation is planned for this year, within months if not weeks. Another 253 apartments have been granted Planning Consent on Ilderton Road.

13. The other additional units detailed in the representation are under existing application, with designs already completed and submitted for approval. Of these, 287 Studios and 47 apartments are very close or overlooking the Penarth Centre on Ormside Street and Penarth Street and likely to be significantly affected. As outlined in the EPT representation, the site falls within a published planning masterplan area identified for 4700 homes. Again, this is not speculation, it is current established fact.
14. There is no doubt that the character and residential density of this area is already undergoing fundamental change. EPT view this as highly relevant when considering the promotion of the Licensing Objective to proactively Prevent Public Nuisance, particularly in light of the existing Licensing Policy hours in this location.
15. The Agent of Change principle appears to have been misrepresented as inherently protective of surrounding residents and requiring those developments to mitigate future noise or nuisance from this venue. Whilst Agent of Change would apply to those developments within the Masterplan area but not yet brought forward for consent, the dwellings referenced above were already long granted consent without the currently proposed Premises License in operation and apparently without any lawful entertainment use in this location.
16. The Agent of Change now, in respect of those particular developments, would in fact be Ormside Projects. If/when they make a planning submission to lawfully allow this use to these hours, the onus would be on Ormside Projects to demonstrate their newly proposed mode of operation can exist without adverse impact on those long-consented developments.
17. We note the Planning Authority state they '*consider it unlikely that planning permission would be granted for such a use in this area*'. We also consider it unlikely that the use to the hours proposed would be appropriate in Planning terms and as a consultee we would be highly likely to object to any such Planning application for much the same reasons as outlined in this representation.

Engagement

18. It is unfortunate the applicant has taken such an adversarial approach to this application. EPT promptly responded to pre-application engagement outlining the process, making clear the proposal was likely to elicit a representation, and that an application would require extensive noise controls. In response, EPT received an email misrepresenting our comments

and applying pressure to the effect that *any* representation in this case would contravene S.182 Guidance.

19. There has been no contact or engagement whatsoever from the applicant on the substance of EPT's representation since it was made on 1st July until 19th July. The response of 19th July contains the inaccuracies detailed above and much of the response concentrates on an attempt to delegitimise the EPT representation rather than making an effort to address the substance of our concerns.
20. EPT have since received a telephone call from Mr Levitt on 25th July during which some of our concerns were discussed directly for the first time however no changes were offered to the application and no enhanced controls accepted.
21. In particular, little comment has been made on the obvious risks from dispersal, vehicles and noise from outside areas and in surrounding streets to the proposed hours. This is just referenced to a dispersal policy which we know can only have limited efficacy in stopping noise in the street away from the venue. This is a key reason why this type of venue is generally considered inappropriate in residential areas.
22. The serious risks of sound transfer internally to dwellings within the building have been dismissed on the basis that the current resident is unlikely to complain. No comment has been made on EPT's suggested conditions to promote the Licensing Objective, other than rejection of one usually uncontentious condition which is commonly accepted by premises Borough-wide. No proposal has been advanced to reduce hours of operations to address our concerns.
23. EPT would be prepared to withdraw our representation if the applicant can amend the premises opening hours and hours for licensable activities to match those on the existing License (868596), those being appropriate hours already determined on appeal, and additionally incorporate the conditions previously requested in our representation. We remain ready to further discuss the substance of our concerns in an effort to avoid a Hearing.

Richard Earis

Principal Environmental Protection Officer

Environmental Protection Team

Appendix A: Detail of Residents Complaints

Date	Reference	Complaint detail
1/9/2020	934272	<p>From: Sent: Tuesday, September 01, 2020 3:26 PM To: Noise and Nuisance; Planning.Enquiries; Planning.Enquiries; Regen, Licensing Subject: Planning Breach and Temporary Events Licence Breach @ Ormisd Project, Unit 32a, 32b, 32c and 32d Penarth Centre, SE15 1TR</p> <p>Dear Sir/ Madam,</p> <p>RE: Ormisd Project, Unit 32a, 32b, 32c and 32d Penarth Centre, SE15 1TR</p> <p>The above property is planning on holding a ticketed all night amplified music event this Saturday the 5th September between 23:59-06:00 (event details attached). Ormisd Project only have a licence until 00:00 and I ask if you would kindly investigate this matter as it is a clear breach of their licence.</p> <p>Under the conditions of the licence, which is attached for reference, the following items are also not being adhered to, and I would like to ask if these can be investigated please:</p> <p><i>158 - A sign requesting customers to respect local residents and leave the premises quietly will be displayed at each public exit from the premises.</i></p> <p><i>This has not been provided.</i></p> <p><i>323 - No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.</i></p> <p><i>Loud noise emanates from the property on a regular basis. Insufficient sound insulation has been installed. No sound insulation has been installed on the ceiling and floor at all.</i></p> <p><i>349 - No externally promoted events will be permitted at the premises; externally promoted events are those which are promoted, managed and delivered by external promoters not affiliated to the Premises Licence holder.</i></p> <p><i>All events at the property are externally promoted events.</i></p> <p><i>350 - A fire risk assessment will be conducted and regularly reviewed. In-line with the Fire Risk Assessment: a. Heat / Smoke detectors are installed and maintained by a competent person. b. Fire extinguishers are installed in accordance with the recommendations of the fire risk assessment. c. Emergency lighting is installed in accordance with the recommendations of the fire risk assessment. d. All emergency exits are marked on the premises plan.</i></p>

No fire risk assessment exists. The external escape route through an unprotected stairwell contravenes building regulations.

355 - A sign requesting customers to respect local residents and keep noise to a minimum will be displayed in the designated Smoking Area.

This has not been provided.

8AJ - The designated smoking areas for the premises shall be the area to the rear of the premises identified as Smoking Area on the plan attached to this licence and the communal area at the front of the building identified as Ground Floor Smoking Area on the plan attached to this licence. The maximum total number of customers permitted in either smoking area, or both combined; at any one time shall be 20 persons.

The lease for the property does not allow for a smoking area in the communal area of the building.

I would also like to add four additional breaches which I ask if you would kindly investigate:

1. There is no planning permission for this property
2. The VOA business rates defines it as a 'studio' space
3. The property has been split into four units in order to avoid paying business rates due to small business rates relief. The property is in fact combined and all used for Ormside Projects events.
4. Any temporary events licences associated with this property should be seen in light of the above comment that it is in fact a single space and not 4 separate spaces.
5. The lease for the property prohibits the use of the space as an events or music space. 'Quiet enjoyment' is also a condition of the use of the space in order not to cause nuisance for neighbouring properties.

Please would you kindly confirm receipt of this email and provide any updates on the above.

Yours faithfully,

7/12/2019	916000	<p>Music - RR: Resident reporting loud music from party in commercial building next door.</p> <p>I went to the complainant's premises which is a commercial premises now used for residential. No visible sound insulation measure had been undertaken. The</p>
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	<p>sound heard was not an issue although there was some structural sound transfer. I explained that the building was not designed for residential occupation but I would check if there was permission granted by licensing to have this event. Single glazed windows in the premises. I also advised the complainant to make a representation to the licensing team so that they are informed that the building block is now used for mixed residential - commercial. The source was 32 penarth street (next to Winner cash and carry) A queue of people waiting on a queue to go in. People's noise but security at the front to manage the entry and exit of the place. A TEN was applied for Michael Mithlevtt Notice number 871053 I advised that he turns down the bass as it was causing structural noise transfer. He appeared surprised that people were living within the area as he seemed here to be a commercial area. I left at 02.04hrs. NFA</p>
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From:

Sent: Tuesday, July 26, 2022 3:36 PM

To: Earis, Richard <Richard.Earis@southwark.gov.uk>

Cc:

Subject: Re: With respect to your representation made against Premises License Application 877689

Hi Richard,

Thank you for your detailed response, we will take some time to go through all of your points, but at this juncture I would just like to address one of them for the record. This is that I would like to make everyone aware of our attempt to engage with Environmental Protection back in May when I invited you to review our pre application documents, to which you replied that you did not have the capacity to do this, and then, in our second attempt to engage, we tried to summarise some of the documents for you, detail the management and sound proofing of the space to and invited you to visit the space, regrettably we received no reply to this email.

Please see attached correspondence,

Kind Regards

Michael Levitt



ORMSIDE PROJECTS <ormsideprojects@gmail.com>

Pre-application - Premises Licence Application - ORMSIDE projects SE15 1TR

ORMSIDE PROJECTS

Wed, May 25, 2022 at 4:13 PM

To: "Earis, Richard" <Richard.Earis@southwark.gov.uk>

Cc:

Dear Richard,

Many thanks for your prompt response to our Pre-App enquiry. Appreciate your valuable time to share your initial thoughts.

In response to your comment, I would like to share a little more information on our activities, the measures we have undertaken at the premises and in our operation of the venue to mitigate the limits identified within the Licensing Policy, specifically, as you reference, Noise Controls.

I've summarised below information that is encapsulated in our Pre-App submittal documents for convenience.

Whilst we understand that our current hours of operation and proposed hours sit outside of the Southwark Licensing Policy we would like to explain the reasoning for this in more detail. Ormside Project is a grass roots art and music venue delivering and developing artistic and musical showcases for a broad audience. Our programmed events rely on Ticket & Bar Takings in order to pay for our overheads including operational staff, security, equipment and running costs.

As an Arts Council Engalnd recognised cultural provider and funded by the Cultural Recovery Fund, the continuation of our cultural offer to support the propagation of relatively unknown developing and local artists, would be severely compromised if we were only able to operate within our current premises licence and with limited TENs allocation. In fact since the reopening of venues across the country post the COVID19 pandemic restrictions being lifted we exhausted all our years TENs in 4 months period and in this new calendar year with more TENs allowed we are still very operationally restricted. Without the opportunity to extend our operational hours to enable a higher bar take and ticket sales we would have to be letting staff go and reducing our program of artistic development, both of which would be a negative impact on the local, night-time and cultural economy of the area. The operational hours proposed would be a way of regularising our current operations rather than an overt extension of our business activities. This application is not simply an opportunity for commercial gain, rather it is a calibrated means of surviving as a grassroots venue through a legitimisation of the operations we have been carrying out since 2015.

We would like to invite a representative of Southwark's Environmental Protection Team to visit the premises and witness the physical measures that I describe below and have a conversation about how we operate the venue to minimise the potential for public nuisance with a view to incorporate any further suggestions or respond to any specific concerns that EPT may make/have in the context of our operations.

Please do let me know when a suitable opportunity to meet at the venue might arise in the coming

weeks.

Track Record:

To date and for nearly 7 years there have been next to zero complaints relating to any Noise from operations/events at Ormside projects.

Specific Noise Control Measures:

Since initiating Ormside Projects at 32 Penarth Centre, we have continuously monitored our sound outputs and developed mitigation for the potential impacts of noise relating to our physical position in the locality. Specific Design measures include:

1 - An in-room dB meter that graphically displays the sound level within Room 1 of the venue. This enables the venue manager and performers to actively participate in sound levels and act accordingly to control sound to avoid it becoming a nuisance. This physical measures relates to Step 16 in our operating schedule, under Section d) to uphold the prevention of public nuisance.

2 - Internal Partitions and Linings: In creating the 2 rooms and bar area within the venue a carefully constructed decoupled acoustic partition system has been installed. This is formed from a double/triple layer of fire and acoustic quality board layered on stud work with infill earthwool insulation and an air gap to minimise sound transfer from interior sound sources to the surrounding fabric of the base building structure, and sound transfer between the rooms of the venue.

3 - Window Perimeter to Ormside Street: We have added a layer of 12mm secondary glazing to the window perimeters of the west elevations of the property. Because we operate Room 1 for various functions other than musical showcases/events such as exhibitions, art installations, and workshops we often require natural light from the glazed elevations. To achieve this the secondary glazed area is faced with an internal screen of acoustic rated sheet material that can be de-mounted when loud music is not being performed.

4 - Sound Absorbent Panels, are hung to the internal perimeters of the venue rooms to dampen reflections further reducing the transfer of sound to the exterior. These are formed from professional grade fire resistant acoustic insulation wrapped in compliant fire-retardant fabric.

5 - Secondary Roof Linings have been installed throughout, formed from earthwool insulation and a 48mm three layered board arrangement on timber stud isolated with rubber pads to further dampen sound transfer.

6 - Bar openings are carefully designed to limit the transfer of sound by creating a minimal aperture for service to customers. This measure drastically reduces sound behind the bar counter to the dual benefit of protecting our staff from sound levels at events and reducing the transfer of sound through the bar/kitchen area to the rear of the venue.

7 - A World Class Sound System has been designed and installed to enable exacting calibration of sound at our events to limit the potential for sound to cause public nuisance whilst providing the quality expected of an internationally reputed arts venue.

8 - Sound limiting equipment a few layers of electronic limiters are installed that are always set to

ensure safety of equipment, patrons along with noise breakout from the space. Our event Sound engineer has full control of the volume and parametric equalisation at all times.

Operational Measures:

In addition to the physical design measures incorporated at Ormside Projects we have developed a number of operational measures to limit the potential for Noise created by our customers during and leaving the premises as highlighted in our application, Operational Schedule, Staff Handbook and Security, Dispersal & Operations documents. These include:

9 - Supervised Smoking areas, managed by SIA trained security staff meaning that customers can be asked to come inside or leave the premises if excessive noise is generated. In cases where SIA is not required the area is monitored by a member of staff.

10 - Signage for Smokers and Patrons to keep noise to a minimum when exiting the premises.

11 - A Soft Close with house lights up 30 minutes before end of operational hours to initiate a gradual departure of customers from the premises, preventing a mass of people leaving the venue all at once.

12 - Headline Acts not placed at the end of the night, to further stagger the departure and dispersal of customers from the venue. A proportion of customers will not remain until the end of event if the headline act has already performed. This has been proved through 7 years of operating history.

13 - Designated and monitored private hire vehicle pick up zone is in operation to ensure customers leave the area in a mannered and controlled way.

kind regards

Michael

On Mon, May 23, 2022 at 11:46 AM Earis, Richard <Richard.Earis@southwark.gov.uk> wrote:

Dear Michael,

Thank you for your email. We don't have the capacity to offer a detailed Licensing pre-application advice service. I would recommend you read carefully the Council's Statement of Licensing Policy. <https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>

As a very general comment, in light of the licensable activities and proposed hours of operation and the limits in the Licensing Policy, we would be highly likely to object to an application on this basis. It would then be a decision of a Licensing Committee whether such a late operation could be licensed. Any such application should include extensive noise controls.

This of course does not preclude continued operation under Temporary Event Notices as long as events take place without causing public nuisance.

Kind Regards,

Richard

Richard Earis

Principal Environmental Protection Officer
Environmental Protection Team

020 7525 0328

Postal address: Southwark Council | Environmental Protection Team | Regulatory Services | 3rd Floor
Hub 1 | PO Box 64529 | London | SE1P 5LX.

Office address (By appointment only): Southwark Council | Environmental Protection Team |
Regulatory Services | 3rd Floor Hub 1 | 160 Tooley Street | London | SE1 2QH

www.southwark.gov.uk

visit: <http://www.southwark.gov.uk/air-quality>



Please consider the environment - do you really need to print this email?

From: Lotsu, Godwin <Godwin.Lotsu@southwark.gov.uk>
Sent: Friday, May 20, 2022 4:47 PM
To: Earis, Richard <Richard.Earis@southwark.gov.uk>
Subject: FW: Pre-application - Premises Licence Application - ORMSIDE projects SE15 1TR

977059 cmu

From: Regen, Licensing <Licensing.Regen@southwark.gov.uk>
Sent: Friday, May 20, 2022 4:10 PM
To: Lotsu, Godwin <Godwin.Lotsu@southwark.gov.uk>
Subject: FW: Pre-application - Premises Licence Application - ORMSIDE projects SE15 1TR

Log it as pre application for ept officer

From: ORMSIDE PROJECTS <ormsideprojects@gmail.com>
Sent: Friday, May 20, 2022 3:27 PM
To: Regen, Licensing <Licensing.Regen@southwark.gov.uk>; environmental protection <environmental.protection@southwark.gov.uk>; SouthwarkLicensing@met.police.uk
Cc: Edward Holloway Tear, Jayne <Jayne.Tear@SOUTHWARK.GOV.UK>; Ian.Clements@met.police.uk;
Subject: Pre-application - Premises Licence Application - ORMSIDE projects SE15 1TR

To whom it concern

Further to our direct communications over the previous months please see attached documents as the basis for a pre-application dialogue and feedback on an new Premises Licence Application for Ormside Projects, 32 Penarth Centre, Ormside Street, SE15 1TR

We are seeking your inputs as the responsible authority on our pre-application submittals. As your feedback will inform our final application we request any comment or dialogue within the next 14 days at which point we shall submit the final application on Friday 3rd June 2022.

Please forward to the relevant parties to enable timely feedback and comment on this pre-application consultation.

Kind regards

Michael Levitt

MD of PC32 ltd - ORMSIDE projects

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ORMSIDE PROJECTS

32 Penarth Centre

**Ormside St
SE15 1TR**

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