

APPENDIX J



NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 31 OCTOBER 2023

SECTION 51 LICENSING ACT 2003: WAZOBIA RESTAURANT, 670 OLD KENT ROAD, LONDON SE15 1JF

Decision

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 submitted by Space Investments Limited for the review of the premises licence issued in respect of Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF having had regard to all relevant representations has decided to modify the licence.

Conditions

1. That clearly legible signage shall be prominently displayed where it can easily be seen and read by customers, at all exits from the premises and in any external areas, requesting to the effect that customers leave the premises and locale in a quiet and orderly manner with respect to local residents. Such signage shall be kept free from obstructions at all times.
2. That a dispersal policy to assist with patrons leaving the premises in an orderly and safe manner shall be devised and maintained regarding the premises. A copy of the dispersal policy shall be accessible at the premises at all times that the premises are in operation.

The policy should include (but not limited to):

- i. Details of customer/staff egress at the premises shall be managed to minimise causing nuisance.
- ii. Details of public transport and taxis in the vicinity and how customers will be advised in respect of it.
- iii. The management of the "winding down" period at the premises.
- iv. Details of the use of security/stewarding in respect of managing customer dispersal from the premises.
- v. The management of ejections from the premises.
- vi. How any physical altercations at the premises are to be managed

All staff shall be trained in the latest version of the dispersal policy. Details of which will be recorded in the staff training logs at the premises. The dispersal policy shall be made immediately available to responsible authority officers on request

3. That clearly legible signage stating a dedicated contact telephone number for the premises will be prominently displayed where it can easily be seen read by passers-by. The signage will state that the phone number shown can be used to contact the premises in respect of any complaints regarding the operation of the premises. Such

signage will be free from obstructions at all times. The telephone in respect of this number, if a mobile phone, must be on the duty manager's person at all times.

4. That a sound limiting device (or similar equipment) will be installed at the premises and will be maintained in full working order and be in use at all times the premises are in operation.
 - i. All amplification equipment, entertainment devices and amplified instruments shall be routed through the sound limiting device (or similar equipment) and shall be calibrated so that the amplified sound at the premises noise emitted from premises does not cause a statutory or other nuisance. Particular regard must be given to the attenuation of bass frequencies. Only management staff will have access to the sound limiting device (or similar equipment) and will be able to demonstrate that it is in use at the immediate request of responsible authority officers.
 - ii. A qualified professional acoustic consultant shall be employed to calibrate the sound limiter at the premises and to arrange the layout, installation and orientation of the speakers at the premises so that sound transmission is minimised.
 - iii. A signed and dated report from the acoustic consultant regarding the calibration of the sound limiter and any amendments to the speaker installation at the premises report shall be kept at the premises and provided to responsible authority officers immediately on request.
 - iv. Once the sound limiter has been calibrated, its control settings shall not be altered at any time, except for when altered by a qualified professional acoustic consultant or the premises' sound engineer.
5. That all external doors and windows at the premises shall be kept closed except to allow ingress and egress to and from the premises.
6. That conditions 842 and 843 are removed from the premises licence.
7. That Condition 845 to be amended to include that the SIA registered door supervisors shall remain at the premises until all patrons have vacated the premises and until at least 30 minutes after the premises close.

Reasons

This was an application submitted by Space Investments Limited for the review of the premises licence issued in respect of Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF.

The licensing sub-committee heard from the applicant, who advised that the premises was a restaurant was a nightclub from Thursday nights onwards, which caused severe noise nuisance and disturbance to the applicant's tenants who resided in the properties above the premises. Tenants had complained of noise and vibrations being felt in their homes from the premises. Tenants also complained of patrons shouting, fighting and general disorderly

behaviour outside the premises which intimidated the residents, who were described as feeling too unsafe to leave/enter their home late at night. The applicant stated that some residents had been threatened with violence, with the police being contacted (see later).

A noise abatement notice had been issued but the tenants had reported little change. The noise had a huge impact on the tenants' health, safety and general wellbeing, with tenants terminating their tenancy agreements early. The noise disturbance began in the evenings and continued into the early hours of the following morning, often beyond licensed hours. Both the applicant and their tenants had attempted to address matters informally with the premises but had been ignored.

Although none of the applicant's tenants attended the hearing, the members of the sub-committee noted the following comments from their emails spanning the last (approximately) 12-months in the agenda:

"...Tonight particularly has been incredibly bad, more so than any other evenings. The music is not of a restaurant noise level but that of a night club and I can't really imagine how the apartments below us are managing. It started just after 2am and I was awoken by street noise of people arriving at the venue so it's certainly a party of some sort. I know there is an apartment below us so can only imagine how hard it is for them".
(8 May 2023, Agenda, page 127)

"...They are loud Friday and Saturday nights (sometimes they have parties on a Thursday as well) though this time they were substantially louder than usual. A fight between people at the party also broke out after the event on the street which kept us up.... there was lots of yelling and swearing and saw one of the men in a headlock. On occasion there have been men blocking the door entrance to our building which as a female I haven't felt comfortable having to maneuver around them or press the code to open the door.

We have not found it enjoyable living above the restaurant since we moved in...

I wear ear plugs but feel that I shouldn't need to if I want to sleep in my own apartment"
(9 May 2023, Agenda, page 129)

".....My ensuit room is right above the music! The floor is shaking, it feels like hell, all the musical bass and vibration affects the whole flat and my room in particular, till 4am every Friday and Saturday! It's unbearable....It's like hell.... 2 days a week every single week no rest, no silence how it should be in a living area..."
(17 May 2022 Agenda, page 153)

"...we just can't cope anymore. For the past 3 months we were suffering a lot living in this apartment. We can't sleep during the weekend at all....Every Friday and Saturday the restaurant is playing music till 3am. That whole flat is literally shaking. I have nowhere to go so I am forced to stay on the weekend and not sleeping till the restaurant is shut.... not being able to sleep 2 days in a row every weekend caused us a lot of mental and physical health issues...We were in touch with the owner of the Wazobia restaurant about the situation and were giving him chances to reduce it down but it

doesn't work. We are exhausted....we don't have any more mental strength to deal with a situation...”.

(10 November 2022, Agenda, page 154)

The premises' behaviour and reaction from the tenants included:

“...He also said he is fully license and he can make noise at anytime”.

(17 May 2022 Agenda page186)

“...We have had several face-to-face conversations and text message disputes about the noise disruptions with the manager.... he is unprofessional and very disrespectful in the manner in which he speaks to us, when all we ask is that the music turned down (which it isn't). He assured us this would continue for the duration of our stay here, and threatened to have us kicked out for continuing to ask him to turn it down. He also used personal and inappropriate details to try and divert attention from the issue..”.

(29 May 2021, Agenda, page 202)

“This is a follow up email regarding the progress of the noise from the DJ from the restaurant Wazobia directly downstairs. Unfortunately, it hasn't made any improvement. Over the last view weeks we have had intense conversion with the owner who reminds us how long he's been there, and seems to think we have a personal issue with him. All we would like, kindly, is the music to be a reasonable level between 11pm -6am, due to studies and work. We did set a level with him, to tell the DJ to play the music at, however bv 12am-4am this level is completely ignored....”

(16 June 2021, Agenda, page 203)

The licensing sub-committee heard from the environmental protection team officer who advised that between 2019 and 2023 a total of 15 complaints had been recorded. The council's noise and nuisance team attended the complaints and a statutory noise nuisance had been witnessed on 2 May 2022 after which a noise abatement notice was issued and again, on 4 June 2022, when a contravention to the noise abatement notice was witnessed. A caution was issued in respect of the breach of the noise abatement notice.

The officer also advised a statutory nuisance had also been witnessed in March 2018. Despite the premises licence holder appearing as accommodating in abating the nuisance, the officer stated that complaints continued to be received. The officer felt that the problems could be addressed by the premises licence holder/freeholder by modifying the licence. In view of the complaints being received after 00:00 at weekends, the officer recommended that the premises opening hours be reduced to match in line with those detailed in the Statement of Licensing Policy [2021-2026] for the area, being 23:00.

The licensing dub-committee heard from licensing as a responsible authority who advised that the licensing unit had received five complaints of noise nuisance regarding the premises which had been made by two residents residing at different addresses above the premises. The officer also made reference to two abatement notices served by the noise and nuisance team in respect of the loud amplified music emanating from the premises. Complaints of disorder caused by the premises' customers had also been received.

The officer concluded that since statutory noise nuisance had been witnessed twice due to the operation of the premises, it was likely to arise again. The officer recommended that the licence should be modified and suggested 13 conditions.

The legal representative for the premises then addressed licensing sub-committee and stated that the premises was a restaurant that had a late night licence when there is regulated entertainment on Fridays and Saturdays until 03.00. It was not accepted that the premises operated as a nightclub on these days, or at all.

Only one noise complaint had been received in 2022 and an abatement notice had been served in May 2022. It was the legal representative's contention that the notice had achieved its aim in abating the noise, benefiting the tenants. It was also suggested that there was essentially only two noise sensitive flats. It was accepted that there had been a breach of the Notice and a caution was accepted, as insufficient time had been provided to rectify matters in the premises. This included the removal of four wall mounted speakers; there was now only one floor standing speaker. To reduce the operating hours to 23:00 hours seven days a week was not a proportionate response to the application and would destroy the business.

The legal advisor for the premises also asserted that the noise complaints amounted to a private nuisance which should be addressed outside the licensing review process between the two leaseholders (being the applicant and the premises). There had also been historic animosity with the Applicant; no corroborating evidence was produced to the sub-committee regarding this.

Furthermore, the tenant in Flat 1 submitted a representation in support of the premises (Resident B, Agenda page 387), confirming that the premises was also cooperative. It was also highlighted that the police had not submitted a representation (only comments), making the allegations of disorder by the premises patrons questionable.

This was a review application of a premises licence submitted under Section 51 of the Licensing Act 2003 (LA2003) in respect of Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF.

The premises is located on the ground floor of a four storey building on Old Kent Road, a major arterial road with a high volume of traffic both day and night. The premises has the benefit of a licence with opening hours: Sunday to Thursday until midnight and Friday and Saturday until 03:30 hours with licensable activities until 30 minutes prior to closing.

The applicant informed the sub-committee both orally, and in the written application that the noise disturbances emanating from Wazobia Restaurant had caused severe financial burdens and losses directly as a result of the noise nuisance. Financial loss is not a relevant consideration in respect the review of a premises licence. It is a positive duty of the licensing authority to promote the licensing objectives:

- “(a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm”.

s.4(2) LA2003

In determining the review application, it must promote the licensing objectives having regard to the application, relevant representations, Southwark's statement of licensing policy 2021-2026 (published under Section 5 of the Licensing Act 2023 and the Home Office Revised Guidance issued under Section 182 of the Licensing Act 2003 (July 2023) (the Section 182 guidance).

The options available to this sub-committee are:

- i. Take no action
- ii. Modify the premises licence
- iii. Exclude a licensable activity
- iv. Remove the designated premises supervisor
- v. Suspend the licence
- vi. Revoke the licence

(s.52(4) LA2003)

The legal advisor for the premises was of the view that the matters complained of by the applicant were a private nuisance; it did not materially affect the reasonable comfort and convenience of life of a class of His Majesty's subjects (*Attorney General v PYA Quarries* [1957] 2 QB 169). Because the matters amounted to a private nuisance, no action should be taken in respect of the premises licence (Section 52(3) Licensing Act 2003). This sub-committee does not agree with this proposition.

The Environmental Protection Act 1990 Act (EPA 1990) refers to two alternatives, that either

“noise emitted from premises so as to be prejudicial to health” or “a nuisance” (s. 79(1)(g)).

Also, the Section 182 guidance provides:

“Public nuisance is given a statutory meaning in many pieces of legislation. **It is however not narrowly defined in the 2003 Act and retains its broad common law meaning**” (emphasis added)

(Paragraph 2.21).

This legal position is similarly supported by case law. Members were advised of *Wellingborough Borough Council v Gordon* [1993] 1 ELR 218 where a nuisance was witness by a passing officer, but no neighbours had complained:

“...nuisance can be proved notwithstanding that neighbours have refrained from complaining and that the evidence comes from a different source from those who might have been adversely affected by the nuisance”

also:

“..To establish noise nuisance it is not necessary to adduce evidence from a neighbouring occupier that he actually suffered interference with his reasonable enjoyment of his property” (emphasis added)

Further, *R v Carrick DC, ex p. Shelley* [1996] Env. L.R. 273, referred to the EPA 1990:

“In principle ‘nuisance’ has its common law meaning, either a public or a private nuisance”

Further still, Bamford v Turnley (1862) 3 B & S 66, 83: Nuisance is:

“a substantial interference with the ordinary use of land.”

The Section 182 guidance speaks of the promotion of the prevention of public nuisance and that:

“..through representations, **to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences...**” (emphasis added).

(Paragraph 2.20)

The sub-committee was also mindful of:

“Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises”.

(Paragraph 2.22)

and “...the approach of licensing authorities and responsible authorities should be one of prevention”

(Paragraph of 2.23)

The licensing sub-committee was satisfied that given that statutory noise nuisance was witnessed on two occasions and, noise and disorder complaints received from separate residential properties as a result of the operation of the premises. The complaints detailed in emails from tenants (extracts detailed above) suggests a high risk of further noise complaints or disorder in the vicinity of the premises being received if without additional measures added to the premises licence.

In considering what proportionate measures could be put in place alleviate the nuisance, the premises legal advisor was scathing of the conditions proposed by licensing (as a responsible authority). The sub-committee dismissed the comments made, in the knowledge that the officer representing Licensing was an experienced officer. The sub-committee was also mindful of the Section 182 guidance at paragraph 9.12 which provides:

“Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority’s main source of advice in relation to a particular licensing objective”.

Having considered all of the verbal submissions and the information presented in the agenda, the licensing sub-committee decided that taking no action on the review application would undermine the licensing objectives, which this sub-committee is under a duty to promote. The representative for the premises indicated those conditions that would promote the licensing objectives in addition to being appropriate and proportionate. These conditions (in amended format) are to be added to premises licence.

In reaching this decision the sub-committee had regard to all the relevant considerations, the four licensing objectives and the public sector equality duty and determined that this decision was appropriate and proportionate.

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.

Issued by the Constitutional Team on behalf of the Assistant Chief Executive - Governance and Assurance

Dated 9 November 2023