

APPENDIX E

From: [REDACTED] **On Behalf Of** Safeline Training & Consultancy
Sent: Tuesday, May 18, 2021 4:03 PM
To: Prickett, Mark <Mark.Prickett@southwark.gov.uk>; Regen, Licensing <Licensing.Regen@southwark.gov.uk>; Heron, Andrew <Andrew.Heron@southwark.gov.uk>; [REDACTED]
Subject: Fwd: EPT representation - Major variation of premises licence- Brunchies, 1 Valmar Road

Dear Mark,
Similarly, Adam Food and Wine 6 Coldharbour Lane SE5 9PR Licence number 858484 are licence to do off sale from 6:00 to 24:00 hours daily.
More Flour to the People Ltd, 16a Coldharbour Lane, SE5 9PR licence no 869957 are licenced for on sale 10:00 to 23:00 Monday to Saturday and 12:00 22:30 Sundays.
Kind regards
Mustafa

From: Safeline Training & Consultancy [REDACTED]
Sent: Tuesday, May 18, 2021 3:15 PM
To: Prickett, Mark <Mark.Prickett@southwark.gov.uk>
Cc: Regen, Licensing <Licensing.Regen@southwark.gov.uk>; [REDACTED]; Heron, Andrew <Andrew.Heron@southwark.gov.uk>
Subject: Re: EPT representation - Major variation of premises licence- Brunchies, 1 Valmar Road

Dear Mark,

Further to your representation, I'm writing to clarify matters regarding our variation application.

First of all, as I have written before, the part of the application that contained the music being played outside was an error and it has since been withdrawn from the application.

The reason we made the variation the application was because we obtained the temporary planning permission for using the rear yard between 09:00 to 15:30 and we were advised by the council to make a minor variation to remove the condition 312 so that we could serve alcohol during the hours of our planning permission, in the yard as well. However, then we were told it had to be a full variation, and as we were going to apply again, prior to submitting the variation application, we had discussed with the licensing officer, Andrew, the following:

1. The business is suffering due to the pandemic and use of the yard was essential for our survival.
2. The business was initially a coffee shop but now are a restaurant and the customers ask for special occasions such as birthdays and we have

served a number of temporary event notices last year to accommodate these events for similar hours.

3. We made a number of Temporary Event Notices for the sale of alcohol hours similar to what we are seeking. There was no counter-notice served by the relevant authorities and no complaints made to the council at any time for any of them, that we are aware of.

Therefore, we explained that we needed to do it quickly so that we could use the yard and that making a number of TENS and variation applications each year is costly and we prefer something more comprehensive to suit our current needs. We were advised to list everything that we will need once we sort out the planning permission, but obviously on the understanding that we would only be able to use parts of the licence for which we have planning permission. He agreed and suggest this is what we do. Furthermore, we only applied for the last Friday and Saturday of each month Halloween and New Years' Eve annually. If we get event inquiries such as birthdays, wedding anniversaries etc, we would book them on one of these days. We would probably not end up using them all, but it will help us to that we don't need to apply for each event. Our intention is not to run it as a club or bar.

We're fully aware of our planning permission. As I explained above, our intention was not to breach any planning permission. We served four TENS (a total of 21 days) whilst this application is being considered, so although the hours we requested in this application is not within our current planning permission, should it be granted, we were only going to use in addition to the existing licence the use of the yard between the hours of 10:00 and 15:30. The rest of the licensable activities that we applied for would have been used only and if we obtained planning permission for it.

We are currently in the process of preparing an application for planning permission for the hours and days for the licensable activities stated in our premises licence application. We would like you to reconsider our application and we're happy to consider any additional conditions that might be offered by EPT or any other responsible authority. We're also happy, should this licence be granted, to have a condition that it will not be used until planning permission is also granted for the same hours and days for the licensable activities stated in our variation application.

I am aware that each application is considered on its own merits, I would also like to mention that there is another premises about 50 yards from ours at Latin House, 4 Coldharbour Lane (Licence 867189 – granted 02/05/29) for similar alcohol selling hours to ours and included all Fridays and Saturdays (ours is only once a month with extended hours) and included live and recorded music up until 01:00 on the weekends. Their sale of alcohol is on and off for all hours. We are only asking for on-sale because we want to run it as a restaurant where we can monitor and impose measures for the licensing objectives. With off-sale, people can pop-in at any time, but especially at late hours, and purchase enough alcohol to intoxicate themselves thus might cause a nuisance to customers in the premises whilst purchasing and whilst drinking in the street causing a nuisance to the local residents. Also, I have

checked the planning history of the premises, I cannot see any planning application for A3 or E-class use. Please correct me if I'm wrong.

Kind regards

From: Prickett, Mark <Mark.Prickett@southwark.gov.uk>
Sent: Wednesday, May 26, 2021 12:35 PM
To: Safeline Training & Consultancy [REDACTED]
Cc: [REDACTED] Heron, Andrew <Andrew.Heron@southwark.gov.uk>
Subject: RE: EPT representation - Major variation of premises licence- Brunchies, 1 Valmar Road

Dear Safeline Training & Consultancy,

Thank you for your detailed reply which is noted.

The Environmental Protection Team (EPT) are still of the view that the existing operating conditions on the planning permission are clear cut, and this variation of the licence will mean activities undertaken could be in breach of existing planning law.

As advised in my earlier email, section 101 of Southwark's Licensing Policy 2021-26 states "this Authority will look to ensure proper integration with the planning regime...it is strongly recommended that applications for premises licences for permanent commercial premises should normally be from businesses with relevant planning consent for the property concerned. This applies equally to applications seeking a licence intended to facilitate a change of use / type of operation. Where this is not the case, the Council may expect the Applicant to address the reasons why planning permission had not been firstly sought and / or granted and provide reasons as to why licensing consent should be."

The proposal for a condition to not operate extended hours/activities until the planning permission has been varied may be agreeable, however it will be for voting members at a Licensing sub-committee to decide on permission for additional late night hours for this premises.

Whilst the permitting of intermittent TENs over a longer period, as has previously been the case pre COVID for Brunchies, was not objected to, the permitting of later hours on a more regular basis generates concerns over public nuisance, both in terms of the premises' ability to contain noise and possible impact on neighbours sleep, both from internal operations and the coming and going of patrons until the early hours of the morning.

As far as EPT are aware, the premises has also not been adequately assessed for containing entertainment noise (ie noise insulation between neighbouring residential flats) which further generates concerns of permitting entertainment until late at night / early in the morning regularly.

Kind regards,

Mark Prickett
Principal Enforcement Officer
Environmental Protection Team
Tel: 020 7525 0023

From: Safeline Training & Consultancy [REDACTED]
Sent: Friday, May 28, 2021 1:16 PM
To: Prickett, Mark <Mark.Prickett@southwark.gov.uk>
Cc: [REDACTED] Heron, Andrew <Andrew.Heron@southwark.gov.uk>
Subject: Re: EPT representation - Major variation of premises licence- Brunchies, 1 Valmar Road

Dear Mark,

Thank you for your recent reply.

Firstly, I would just like to clarify that we have put in the application the sale of alcohol every day from 10:00 to 15:30, just to clarify, there would not be any bar or alcohol on display in the yard area. Alcohol will be served from inside the premises.

Based on what I have read from your emails, it seems that you're mainly objecting based on our current planning permission and the fact that we have not applied for new planning permission before applying for this variation. I note this by your references to sections 101 and 103 of the Southwark Council's licensing policy, however, section 100 states "The planning, regeneration, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Each regime involves consideration of different (albeit related) matters. Neither Licensing nor Planning Committees are bound by decisions made by the other".

Also, 101 in its entirety reads as "However, this Authority will look to ensure proper integration with the planning regime. **While it is understood that there is no legal basis for a Licensing Authority to refuse a licence application solely because it does not have planning permission, to allow clarity and consistency both for Applicants; and in response of enforcement action**, it is strongly recommended that applications for premises licences for permanent commercial premises should normally be from businesses with relevant planning consent for the property concerned. This applies equally to applications seeking a licence intended to facilitate a change of use / type of operation. Where this is not the case, the Council may expect the Applicant to address the reasons why planning permission had not been firstly sought and / or granted and provide reasons as to why licensing consent should be".

Reading these sections, it seems to me that although it's preferred that planning is sought first and we may need to explain why planning permission was not first obtained (which I will below), there is no legal standing to object on the grounds of planning. Section 100 clearly states that both departments should work independently and is illegal to base your representation on the lack of planning permission, which you're clearly doing so as you mentioned it twice now. Having said that, a planning application was submitted on Wednesday which includes the same hours as the variation application. I know it takes a while for them to validate it and for you to see it online, but I am happy to send you my planning statement should you wish to see it. let me know if you do.

The reason we had not applied for the planning permission first is that due to the council's advice, we initially applied for a minor variation to remove condition 312, and our intention was to continue with the TENs as and when we receive requests for events, thus making a subsequent planning application later on. However, the council changed its mind and asked my client to submit a full variation licensing application instead. In order to be able to use the yard during our permitted hours, we end up serving four TENs and used all our 21 days allowance. All these TENs were completed straight away at the time we were asked to switch to a full variation application. Therefore, in order to be able to have minimal disruption for our serving of alcohol in the yard, we had to apply for a variation straight away as we used all of our TENs. As we don't want to keep making applications all the time, we thought it would be best to apply comprehensively in this variation application to cover events. Otherwise, if we applied for planning permission first, it would have meant that we were not going to be able to use any more temporary event notices for events until the planning department determines the application, which normally takes 10-12 weeks, in reality. I hope this satisfies why we have not applied for planning permission first. Our intentions were never to breach planning law or licensing law. We did not start using the yard until temporary planning permission was granted.

I have already confirmed that we would be happy to have a condition on the licence that says we would not be able to sell alcohol outside the hours of planning permission until such permission is granted. This is clearly explained in section 103 of Southwark's licensing policy "There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. It must be emphasised that where these hours are different to the permitted licensing hours, the Applicant must observe the earlier closing or later opening time".

As also mentioned, I have served a number of TENs for a longer period than our normal opening hours and there were no complaints to us, and I suppose not to the council either as we were not approached by any council department or Police. I don't see what would make you think that nuisance would be caused?

I am surprised that although you have studied the planning history and brought everything to my attention, you've not acknowledged that we satisfied all the conditions. All the conditions are to prevent nuisance, from cigarette extinguishers and bins to sound insulation. Furthermore, with reference to your last email where you state that adequate assessment for containing entertainment noise has not been carried out, please find attached a copy of the applicant's sound test report which was carried out on 02/02/2010. On page 2, you can see it well exceeded the minimum requirements for a pass, and that is why complaints are not received. It is very well soundproofed.

In my previous emails, I have listed a number of other properties in very close proximity to Brunchies (about 3 shops away) with their opening hours and sale of alcohol, in particular, Latin House, which is granted to sell alcohol with live music every day which was granted in May 2019. I checked the planning portal for Latin House, and it would

appear they do not have planning permission. With all due respect, as we're only a few doors away and in the same neighborhood with the same local residents, I cannot see how Latin House playing live music every day until 00:00 and 01:00 on Fridays and Saturdays would not disturb neighbors, but yet our premises seeking to only play unamplified music with excellent soundproofing would disturb the neighbors. Furthermore, most of the food outlets in towns and high streets have residential dwellings above and we're not unique to this. There are many premises opening beyond us and having live music as well.

My client has suffered a lot during the pandemic, including financially and I appreciate that it is your position to evaluate this application, but I hope you can see our intention is not to breach any laws, including planning and licensing. The premises is managed properly and I hope the information I provided has satisfied your concerns and that you subsequently decide would withdraw your representation, avoiding a costly hearing and delaying my client to be able to use the premises within the hours for the licensable activities that he's asking for. As you're aware, we already have a comprehensive list of conditions in our premises licence of which I proposed to satisfy concerns in relation to the licensing objectives. Likewise, I am happy to consider any other conditions you may wish to propose. Whilst we are not looking to upset any residents, we have our own commitments, both for us and 7 employees that need to also make a living for themselves and their families. My client is just trying to make a living, keep the staff going and satisfy the demand from the local residents.

Thank you and kind regards

Pre-Completion Testing Report

Measurements to BS EN ISO 140-4 & 7 and BS ISO 717-1 & 2, following the test procedures in Annex B of Approved Document E to The Building Regulations at :-

1 Valmer Rd, SE5 9NG

demonstrate compliance is achieved when compared to Section O of Approved Document E (2003).

Pass

**Site Sound
Ltd** Digitally signed by Site Sound Ltd
DN: cn=Site Sound Ltd, o, ou,
email=info@site-sound.co.uk,
c=GB
Date: 2010.02.07 06:15:11 Z

Approved Test Engineer SS007
Site Sound Ltd

Site Sound Ltd • Unit 23b Denman Road • London • SE15 5NS • Registered (England) No: 6732448.



Property Type: **Dwelling Formed by Material Change of Use**

Description of locations tested:

Test	Measurement Locations		Measured DnTw + Ctr	Required Level DnTw + Ctr	Measured L'nT,w	Required Level L'nT,w	Pass/Fail	Improvement on Building Regulations
	Source Room	Receive Room						
1 Grp 1 AWF	Ground Floor Shop (rear)	Flat A Kitchen	52 dB	≥ 43 dB			Pass	9 dB
2 Grp 2 ABF	Ground Floor Shop (Mid section)	Flat A Bed	57 dB	≥ 43 dB			Pass	14 dB
3 Grp 2 ABF	Ground Floor Shop (Front section)	Flat A Living	56 dB	≥ 43 dB			Pass	13 dB

ABF – Airborne Floor

Non Conforming Test:

The tests specified below did not conform to Annex B of Approved Document E for the following reasons:-

- **None.**

Report Notes:

- **None**

Testing carried out on behalf of:

Suvamp Ltd
54 Woodvale Rd
SE23

Test Date: 07/02/10

Equipment: Kit 1

Rion NA-28 Class 1 Sound Analyzer Serial No 01170652
Rion UC-59 Microphone Serial No. 00749
Norsonics Nor250 Serial No. 31474

Rion NH-23 Preamplifier Serial No. 70670
Norsonics Nor 277 Tapping Machine Serial no. 2775544
Rion NC74 Serial No. 35173592

Standardized level difference according to ISO 140-4 Field measurements of airborne sound insulation between rooms

Client: Suvamp Ltd

Date of test: 02/02/2010

Source: Ground Floor Shop (rear)

Receive: Flat A Kitchen

Construction between separating element:

Isomass T24, 5 mm chipboard, joists with RW45, resilient bars, closed with 1 sound board and 1 x fire board.

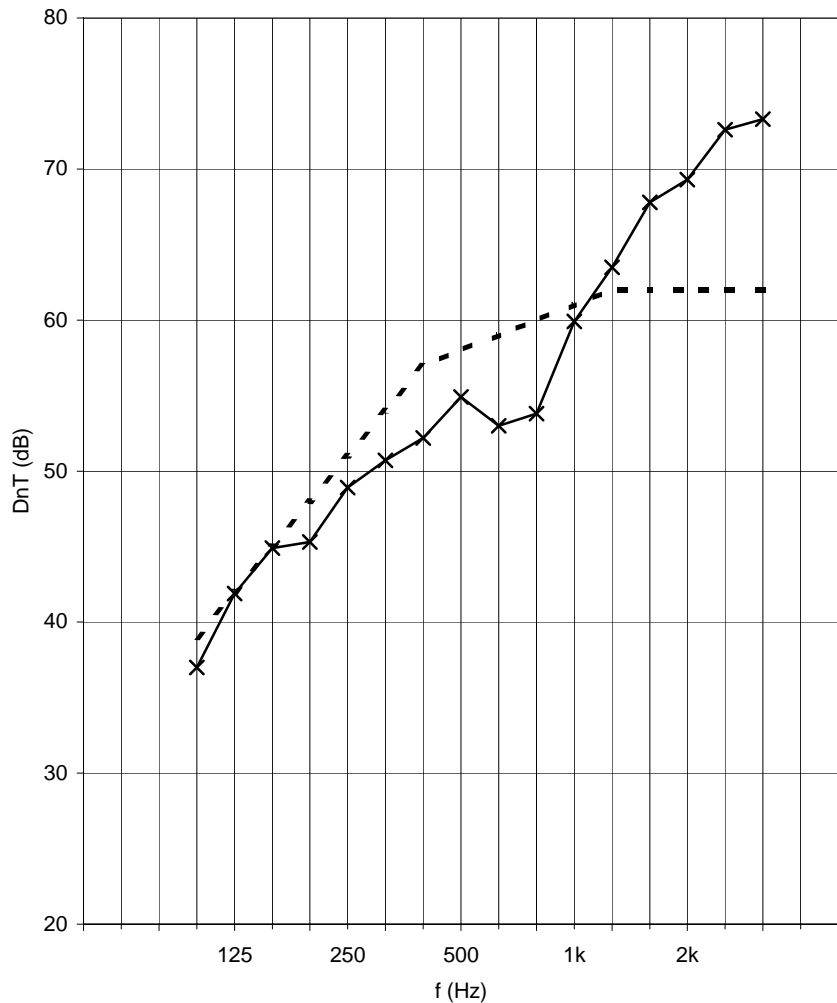
Source room volume: m³ <200

Receiving room volume: m³ 24

----- Shifted reference curve.

---X---X--- Measurement results (DnT values).

Frequency f Hz	DnT (1/3 octave) dB
50	
63	
80	
100	37.0
125	41.9
160	44.9
200	45.3
250	48.9
315	50.7
400	52.2
500	54.9
630	53.0
800	53.8
1000	59.9
1250	63.5
1600	>= 67.8
2000	>= 69.3
2500	>= 72.6
3150	>= 73.3
4000	
5000	



Rating according to ISO 717-1

DnT,w (C; Ctr) = 58 (-2; -6) dB

No error

Evaluation based on field measurement
results obtained by an engineering method

No. of test report: 0151 T1

Name of test institute: Site Sound Ltd

Date: 7th Feb 2010

Signature: 

Standardized level difference according to ISO 140-4 Field measurements of airborne sound insulation between rooms

Client: Suvamp Ltd

Date of test: 02/02/2010

Source: Ground Floor Shop (Mid section)

Receive: Flat A Bed

Construction between separating element:

An independent ceiling closed with 2 x 15 mm sound board was created off joist hangers creating a void partially filled with RW45

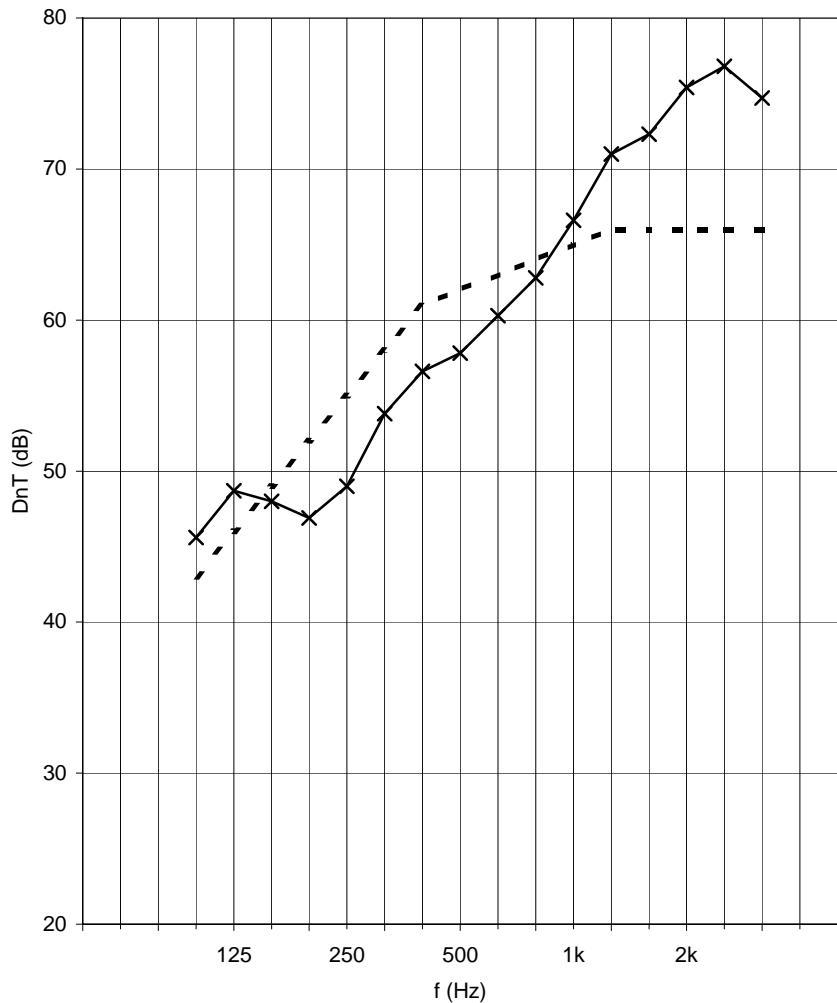
Source room volume: m³ >200

----- Shifted reference curve.

Receiving room volume: m³ 36

---X---X--- Measurement results (DnT values).

Frequency f Hz	DnT (1/3 octave) dB
50	
63	
80	
100	45.6
125	48.7
160	48.0
200	46.9
250	49.0
315	53.8
400	56.6
500	57.8
630	60.3
800	62.8
1000	66.6
1250	71.0
1600	72.3
2000	75.4
2500	76.8
3150	74.7
4000	
5000	



Rating according to ISO 717-1

DnT,w (C; Ctr) = 62 (-1; -5) dB

No error

Evaluation based on field measurement
results obtained by an engineering method

No. of test report: 0151 T2

Name of test institute: Site Sound Ltd

Date: 7th Feb 2010

Signature: 

Standardized level difference according to ISO 140-4 Field measurements of airborne sound insulation between rooms

Client: Suvamp Ltd

Date of test: 02/02/2010

Source: Ground Floor Shop (Front section)

Receive: Flat A Living

Construction between separating element:

An independent ceiling closed with 2 x 15 mm sound board was created off joist hangers creating a void partially filled with RW45

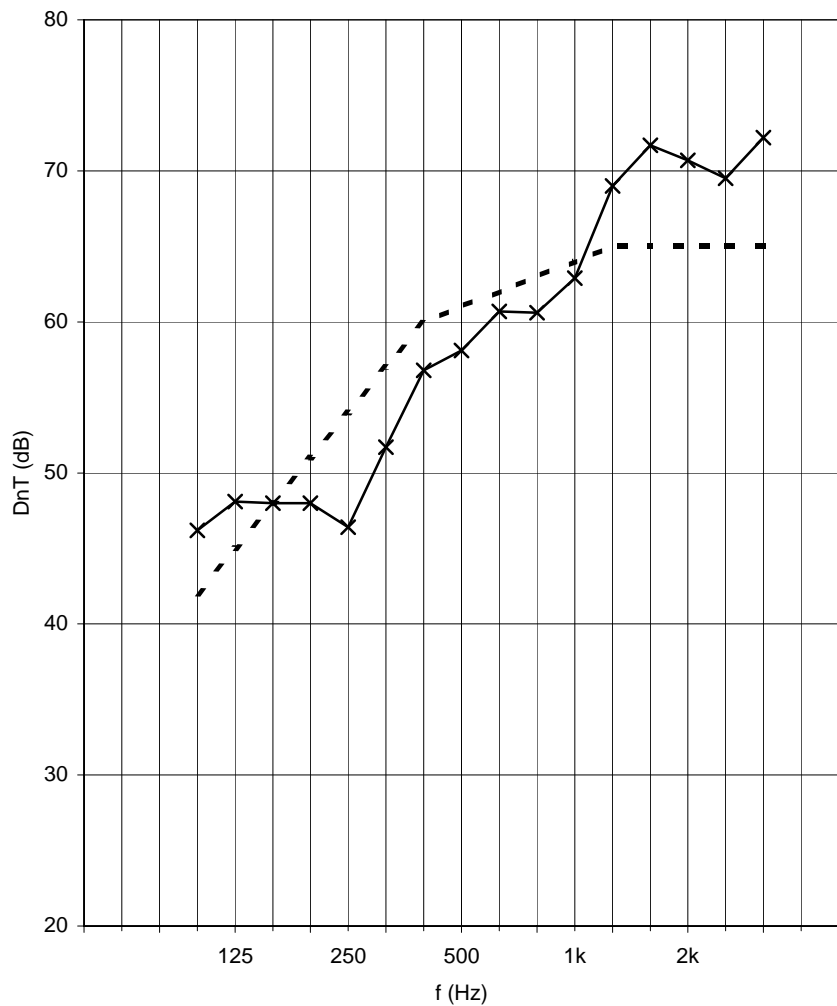
Source room volume: m³ >200

----- Shifted reference curve.

Receiving room volume: m³ 56

---X---X--- Measurement results (DnT values).

Frequency f Hz	DnT (1/3 octave) dB
50	
63	
80	
100	46.2
125	48.1
160	48.0
200	48.0
250	46.4
315	51.7
400	56.8
500	58.1
630	60.7
800	>= 60.6
1000	>= 62.9
1250	>= 69
1600	>= 71.7
2000	>= 70.7
2500	>= 69.5
3150	>= 72.2
4000	
5000	



Rating according to ISO 717-1

DnT,w (C; Ctr) = 61 (-1; -5) dB

Error due to too high background noise

Evaluation based on field measurement
results obtained by an engineering method

No. of test report: 0151 T3

Name of test institute: Site Sound Ltd

Date: 7th Feb 2010

Signature: 

Appendix A

Test Procedure - Airborne Sound Insulation

Airborne sound insulation measurements are taken to a recommended procedure summarised below:-

- A pink noise source generates a steady and continuous spectrum across the required frequency bands.
- Measurements, following the International Standard ², of the sound levels are taken at one-third octave intervals from 100 Hz to 3150Hz, in the source and receive room using fixed microphone positions.
- An average sound pressure level, representative of the space in the each room is established.
- Reverberation time measurements are made in the receive room ³.
- The Standardized Level Difference (D_{nT}) in decibels (dB) is calculated in each frequency band using the equation:

$$D_{nT} = L_1 - L_2 + 10 \lg \frac{T}{T_0}$$

where D_{nT} is the Standardized Level Difference (dB)

L_1 is the average sound pressure level in the source room (dB)

L_2 is the average sound pressure level in the receive room (dB)

T is the average reverberation time of the receive room (seconds)

T_0 is the reference reverberation time of 0.5 seconds

- The Weighted Standardized Level Difference ($D_{nT,w}$) in decibels and the Spectrum Adaptation Terms (C and C_{tr}), are calculated in accordance with BS EN ISO 717-1:1997 ⁴.

Ref: ADE reference (CD) Issue 2

Test Procedure - Impact Sound Transmission

Impact sound insulation measurements are taken to a recommended procedure summarised below:-

- An industry standard *tapping machine* is used as the impact noise source.
- Measurements, following the International Standard ⁵, of the sound level are taken at the one-third octave intervals from 100 Hz to 3150 Hz in the receive room using fixed microphone positions .
- An average sound pressure level representative of the space in the each room are established.
- Reverberation time measurements are made in the receive room ³
- The Standardized Impact Sound Pressure Level (L'nT) in decibels (dB) is calculated in each frequency band using the equation:

$$L'_{nT} = L_i - 10 \lg \frac{T}{T_0}$$

where L'_{nT} is the Standardized Level Difference (dB)

L_1 is the average sound pressure level in the source room (dB)

L_2 is the average sound pressure level in the receive room (dB)

T is the average reverberation time of the receive room (seconds)

T_0 is the reference reverberation time of 0.5 seconds

- The Weighted Standardized Impact Sound Pressure Level (L'nT,w) in decibels (dB) and the Spectrum Adaptation Term (CI), also in decibels, are calculated in accordance with BS EN ISO 717-2:1997 ⁶.

Ref: ADE reference (CD) Issue 2

References

- 1 The Building Regulations 2000
Approved Document E: Resistance to the passage of sound (2003 Edition)
- 2 BS EN ISO 140-4:1998
Acoustics - Measurements of sound insulation in buildings and of building elements
- 3 BS EN ISO 3382-2: 2008
Acoustics - Measurement of room acoustic parameters. Reverberation time in ordinary rooms
- 4 BS EN ISO 717-1:1997 (Incorporating Amendment 1)
Acoustics. Rating of sound insulation in buildings and of building elements. Airborne sound insulation
- 5 BS EN ISO 140-7:1998
Field measurements of impact sound insulation of floors
- 6 BS EN ISO 717-2:1997 (Incorporating Amendment 1)
Acoustics. Rating of sound insulation in buildings and of building elements. Impact sound insulation

Ref: ADE reference (CD) Issue 2