

# **MINUTES OF THE SPECIAL LICENSING SUB COMMITTEE HELD ON MONDAY, 6 NOVEMBER 2023, 7:00PM – 10:07PM**

**PRESENT:** Councillors Anna Abela (Chair), Nick da Costa and Makbule Gunes

## **1. FILMING AT MEETINGS**

The Chair referred to the filming of meetings and this information was noted.

Mr David Dadds, representing the applicant, stated that he felt that holding the meeting being held online was unlawful and should be held in person as he was unable to tell between who was observing or who was making a representation.

The Legal advisor to the meeting stated that holding Licensing Sub-Committee meetings online was legal and it was also legal for observers to attend and would be illegal for observers not be to allowed to attend. Those who were permitted to speak would be the only ones speaking as appropriate.

## **2. APOLOGIES FOR ABSENCE**

There were none.

## **3. URGENT BUSINESS**

There was no urgent business.

## **4. DECLARATIONS OF INTEREST**

There were no declarations of interest.

## **5. SUMMARY OF PROCEDURE**

The Chair provided a summary of the procedure for the meeting.

## **6. APPLICATION FOR A NEW PREMISES LICENCE AT NOYA, 454-460 WEST GREEN ROAD, LONDON, N15 (WEST GREEN)**

Upon opening the meeting, the Legal advisor stated that two representations in the agenda papers found on pages 29, 30, 31, 32 and 37 had been made outside the statutory period to submit representations and had been expanded upon on pages 1-14 in the additional papers. These must also be treated as having been submitted outside the relevant period. The Sub-Committee may not take into account these pages in their deliberations and no reference could be made to them by any speaking participants at the hearing.

### **Presentation by the Licensing Officer**

Ms Daliah Barrett, Licensing Team Leader, informed the Sub-Committee that:

- This was an application for a new premises licence.
- The application was seeking regulated entertainment Monday to Sunday 09:00 to 00:00, late night refreshment 23:00 to 00:00 and the supply of alcohol Monday to Sunday 09:00 to 00:00 on and off the premises.
- The hours the premises would be open to the public Monday to Sunday 09:00 - 00:30.
- The Sub-Committee had been provided with the operating schedule.
- The premises had an existing premises licence.
- The premises was previously subject to a hearing of the Sub-Committee on 21 August 2023.
- Representations had been received from the Noise and Nuisance team and there were representations from residents.
- The premises was situated along West Green Road and comprised of four shop units that had been made into one large overall venue that offered food and drink as well as shisha at the rear of the premises.
- The orange-coloured area in the plan displayed where the shisha area was to be located.
- The website for the business stated that the premises would serve new and unique Japanese cuisine specialising in innovative dishes, drinks, and shisha. The applicant stated that the area would have a retractable roof installed at the rear where shisha activity would take place.
- The premises had operated under a premises licence since the 25 August 2023 and was open to the public prior to this date.
- The new application was seeking to increase hours until midnight across the week and a later opening time for the use of the rear shisha area.
- The application requested for the rear shisha area to operate until 00:00. On the current on the current licence, there was a condition requiring for that to stop before midnight so this would need to be a changed should the application be granted.
- Photos and a copy of the menu could be found in the agenda papers.

In response to questions, Ms Barrett informed the Sub-Committee that:

- Ms Jennifer Barrett would not be speaking at the meeting and Ms April Smart would speak to her representation.
- The representation for Ms Imogen Walker could be found on page 35 of the agenda papers.

### **Presentation by the applicant**

Mr David Dadds, the applicant's representative, informed the Sub-Committee that:

- He would ask the Sub-Committee to note paragraph 2.1, 2.2 and 5.10 of the Licensing Policy.
- This was a premises that was predominantly food led - a restaurant and lounge.
- A total of £1.7 million had been invested in the premises, providing a premises of a very high standard.
- Employment was being provided to 52 people. Part of the Licensing Policy discussed embracing growth, including employment.
- There was a value in contribution to growth, employment and local spend.

- About 50% of the patrons, through religious reasons, would not be consuming alcohol, so only 50% would consume alcohol.
- In relation to the application, there was no objection made from the Police, who under 2.1 of the statutory guidance, were the main source of advice on crime and disorder.
- The Licencing Authority had not raised an objection.
- The original application was put in by an agent and they applied for fewer hours than the restaurant would normally otherwise operate.
- The Licencing policy recognised that a Friday and Saturday, for even a pub in a residential area, would have a terminal hour of 00:00 with dispersal completed by 00:30.
- The premises had got involved with attempting to have discourse with residents regarding noise issues.
- He had been in contact with one or two residents offering them the time of a noise acoustic engineer to go into any resident's home to do any assessment work.
- A report had been written and in relation to music noise, a noise limiter had been set in the rear area which could not be tampered with.
- It had been properly assessed that the music did not escape from the premises into the outside area. That was set at a new limit about three weeks ago, but before that, it was not much different by about 5dBA.
- He had been to the premises on no less than three occasions and standing outside, noise could not be heard from the premises.
- There was some noise regarding the extractor fan and this had been moved and placed in a different area.
- In relation to music and noise relating to people, the premises did not have any effect. The Licencing policy would allow an ordinary restaurant in a residential area to be open on a Friday and Saturday at the hours sought in the application and what one would typically expect from a restaurant.
- It was imperative that the application be granted because the premises needed two sittings and if this could not be attained, then staff would have to be released from duty.
- There were other licensed premises in the area open to 01:00 and later.
- The application was seeking licensable activity until 00:00 and was asking for 30 minutes for dispersal time.
- Some of the objections talked about loud music, but the noise expert who had undertaken an assessment had found that the music did not break out to the surrounding area. It may be that the noise was being heard from another premises in another location. There was a noise limiting device which restricted the noise.
- There was no suggestion of noise from people and the music had been set to background music. It was at 65dBA. Outside, it did not register beyond 51dBA, which was the prevailing background noise anyway as the background noise level was at 51dBA. In relation to some of the objections, Planning was a separate matter from the Licencing Act.
- Conditions had been offered which were robust.
- There had been some objections raised regarding the issue about the extraction fan possibly being moved and blocking a resident's window light.
- The representor listed on page 39 of the agenda papers lived some away from the premises and could not be affected by noise from the premises.
- The licence should be granted as applied for.

In response to questions, Mr Dadds informed the Sub-Committee that:

- Not all patrons came into the premises at 18:00. The premises had 302 potential covers, but there would not be that many patrons in the premises at one time. The

bookings were paced so that patrons could come in at 19:30 to about 20:00 so that the kitchen could steadily produce food.

- One sitting was around two and a half to three hours.
- The premises had nine chefs, one sous chef, porters and drinks staff.
- Most restaurants operated until 00:00 under the previous legislation of the 1964 Act as pubs had to close at 23:00. Restaurants always had a special exemption to operate until 00:00 and the applicant.
- The lounge could be used for shisha smoking. Although the customs of the Middle East could be different, food was sold with shisha at the premises. The area was quite unique and normally the sitting period for that would be two and a half hours. Patrons were encouraged to move to the lounge area to have post dinner drinks, so people were being moved around to get new patrons seated into the restaurant. The menu was not a typical three course meal.
- The premises hosted what was known as 'vibe dining'. A staff member controlled the music. The premises did not have any disco lights. The music could not go over 65dBA which was low. In addition, the person that controlled the music would leave at 23:00. The music was so low, it would not be possible to dance to the music. The 65dBA limit was not much more than the level of conversational speech. The government had advised that background music should not exceed beyond 82dB.
- The sitting period of two to two and a half hours would be paced during the evening. The Licensing policy stated that a premises acting as a restaurant would typically be given a licence until 00:00. The application was not requesting something out of the ordinary from the Licensing policy.
- Patrons would arrive at the premises typically between 19:30 to 20:00 and would have left by 22:30. Hopefully, this would equate to two sittings or twice the capacity of the premises. The business would employ 52 people and would need to have efficiency of turnover. Patrons would not all leave at the same time. Alcohol service would stop at 23:00 so he envisaged the premises to stop serving food at 23:30.
- The music playing at the premises was limited to 65dBA. The music was not loud enough to motivate people to dance. An expert report had been written regarding noise and its assessment stated that the dBA rating of 65 was low and had been fixed. The premises had also been subject to three unannounced visits and there had been no complaint of noise or music.
- The premises would not allow new patrons in after 22:30. As the noise limiter was set, the premises would have the same atmosphere throughout the evening. There was no vertical drinking at the premises and all orders were subject to a table service. In the lounge area. There was a bar near the shisha area, but it was alcohol free.
- Half of the patrons did not consume alcohol and where alcohol was consumed, it was normally with a meal and was moderate in amount.
- The lounge area would be cleared by 00:00, the restaurant would be cleared of patrons by 00:30.
- The premises had spent £1.7 million on the premises and it was a large investment with employment opportunities. The premises was not a nightclub or a late-night bar. The licence that had been applied for with the conditions should satisfy the Sub-Committee of that. The Licencing Authority nor the Police had submitted a representation.
- Visits had been made to the premises on 16 October 2023, 23 September 2023 and 24 September 2023. On all three visits, there was no witness of any breakout noise.
- Typically, the last order for alcohol was one hour before the terminal hour because some of the drinks could take 20 minutes to deliver to the patron. This lent more time to consume the drink.
- The visits made to the premises were proactive visits. They were made on 16 October, 23 September and 24 September. There was no witness of any breakout noise.

## Presentation by interested parties

Ms April Smart, Noise and Nuisance Officer, informed the Sub-Committee that:

- The Noise and Nuisance teams had concerns with regard to the applicant being able to uphold and promote the licencing objectives in relation to public nuisance. The hours the applicant had requested conflicted with the condition of the planning application.
- Condition 3 of the planning application stated that the use of the premises should not be operated before 09:00 or after 23:00 Monday to Friday and also after 23:30 on a Saturday and after 22:00 on Sunday and Bank Holidays.
- The hours asked for in the application would likely lead to further complaints from local residents with regard to public nuisance. There were residential properties located above the premises. The area where the shisha smoking took place, when the retractable roof was open, there were further residential properties which became visible.
- She recommended no change to the current hours that they currently have and the current licence.

Ms Imogen Jeffries, resident, informed the Sub-Committee that:

- She had submitted a representation on behalf of her and her housemates.
- The applicant had shown absolutely no regard for their residential neighbours.
- This was a clear indication that the applicant did not take the responsibility to be respectful and accommodating seriously. The applicant was likely to continue with this behaviour should the application be successful and would regularly breach their licenced hours.
- The applicant regularly breached their licence hours and breached the limit of acceptable noise levels for recorded music.
- The premises caused noise later than the licence currently allowed. This caused nuisance and disturbance to other residential neighbours.
- If the application was successful, it was impossible to believe that the applicant would follow the new licence if it were granted.
- On an almost daily basis, the noise of recorded music interrupted the ability to sleep at night.
- Music could be heard through bedroom walls and in the garden later and for longer.
- The proposed opening hours would contribute to and worsen the problem.
- Although a noise assessment had been conducted on the premises, regulations had probably been maintained about 15% of the time. The rest of the time the applicant's actions could be unpredictable and the premises had DJs at the weekends and hosted private parties.
- The shisha area was regularly open beyond 22:00. It was likely that the applicant played music in the shisha area until 23:00 most weeknights and this was not allowed under the current licence.
- She could hear the noise directly from her own home.
- When the applicant was asked to reduce the noise, she had been told that the premises was unable to because it was a private party on the weekend or that they were too busy.
- On a daily basis, a very loud fan was positioned almost directly above one of the bedrooms in her flat. It was very loud and with the music and it was having a cumulative negative impact on the daily quality of life, well-being and happiness by interrupting sleep and peace and quiet.
- The fan also emanated strong and unpleasant smell of food.

- The fan was built on top of her building without permission from the landlord.
- Neighbours nearby in the building were moving out because of the noise of the fan and the smell of the food that was pumped into their homes.
- The landlord also had a strong objection to the nuisance that had been caused and another complaint had been made to the Council in light of this.
- The owners of the business appeared to be dishonest and deceiving. Residents had been told twice that they were going to move the fan to the other side of the building and a tunnel was built to divert some of the fan's output, which was directly in front of residential windows. Residents were not likely consulted on this, but the fan itself remained, as did the noise it created. The fan appeared to have been moved recently just before the meeting.
- One of the owners at the premises had also told residents that following the construction of the tunnel, neighbours had told the owners that they could not hear the fan anymore and were happy with the result of the action taken. However, when she spoke to them, they said that they had not had that conversation and that it was not true that this had occurred.
- The agenda papers suggested that the owners seemed to think that she might be mistaken regarding which premises the noise originated. She had lived in the area for two and a half years and had not experienced disturbance of this kind previously.
- She did not believe that the applicant would abide by their licencing conditions, partly as they currently did not do so.
- if the applicant was granted the licence, the Council should keep a watchful eye over it. The fire exit at the back of our property was often blocked by cars and vans and this would be extended if the licence hours were also extended.
- Vans were often parked next to her bedroom window and this blocked natural light into her bedroom.

At this point in the proceedings, Mr Dadds stated that the representation made by Ms Jeffries was not fully in keeping with her written representation.

At 8:24pm, the Sub-Committee decided to adjourn to consider Ms Jeffries' representation. The meeting reconvened at 8:33pm. The Sub-Committee stated that it would not take into account new sources of noise raised in Ms Jeffries' verbal representation such as the disposal of glass, vermin and cars and vans as these were not raised in the written representation.

In response to questions, Ms Imogen Jeffries, resident, informed the Sub-Committee that:

- The noise in her bedroom was not background noise. The disruption was variable and this was due to the applicant holding events every so often which were considerably louder.
- The fan appeared to have been installed by builders. It was not likely to have been permitted by the landlord. The landlord got in contact with one of the owners and followed up on it. It was also likely that every time the fan had been moved, it was likely not done with permission from the landlord.
- The fan operated until lunch time and stayed on until closing hours. This was loud and also affected neighbours who lived in the flat above.
- The odours related to food smell and as a food establishment this would be a regular occurrence.
- There had been a lot of contact with one of the owners. She had moved in two and a half years ago. Not all of the complaints had been made into formal complaints.

- The fan had been partially constructed on her part of the building but had been moved on two occasions. The fan was still audible and was now more audible to more people living in the area.
- Environmental Health had not visited her home and although she had complained to them, they were not able to attend in a timely manner. She had not complained to them about the smell, but had not realised she could have done so.
- She had not phoned Environmental Health since September 2023, but had contacted the Council.
- She had contacted the Council 20 times in the last eight weeks to complain about noise nuisance.
- She could hear chairs being moved in her bedroom.
- There was no sound proofing to her building.
- The construction of the fan without consultation, playing of music past the licensed hours and general disregard for the community.
- The applicant had made promises which he had not followed through on.

In response to a question, Ms Barrett informed the Sub-Committee that the playing of background music was not a licensable activity.

To summarise, Ms Smart stated that the application for extended hours was in breach of the planning application as condition 3 on the planning application for the premises stated that the use of the premises would not be operated before 09:00 in the morning or after 23:00 at night Monday to Friday, or after 23:30 on a Saturday or after 22:00 on Sundays and bank holidays.

To summarise, Mr Dadds stated that some of the questions asked appeared to be bias and he hope that the Sub-Committee would keep an open mind. No extractor fan had been placed on a neighbouring property. The extractor fan had been moved twice. Advice had been taken from a noise acoustic engineer so that further advice could be provided on how best the extraction fan could work to mitigate any noise nuisance. Over £40,000 had been spent on the extractor fan. It had been relocated on the applicant's own building, which was a freehold property. It had never been put on to someone else's building. In relation to the noise of the extractor fan, the Sub-Committee had heard that Ms Jeffries had not raised this as an issue with Environmental Health. Had this been raised, officers could have stood outside and listened to it. In relation to the playing of music, it would be a public record on whether 20 calls had been made in relation to nuisance. He was not aware of this and it was likely that Environment Health would have brought this issue to the applicant's attention. The applicant had not been written to in relation to the issue of noise. No noise abatement notice had been issued. There may be a concern that Ms Jeffries' building was an extension to the block where the premises was placed and there was no sound proofing. It could be that the partition between the walls were not very strong. An expert report from a noise acoustic engineer had confirmed that the noise limit that had been set with a noise limiting device and this was a responsible step taken from a responsible operator. The device was set electronically by computer and could not be adjusted. Licencing Officers had made three proactive unannounced visits. The acoustic engineers report stated that the music was set at 65dba. The Sub-Committee could make this a condition if it so wished and if the condition on this was not met, then action could be taken on this. One resident lived too far away in order to be affected by music within the premises. The music could not be heard outside in the alleyway or outside in the front road. Ms Jeffries had not raised any objection in her representation regarding noise from patrons. Further, the fan had been moved away from her. If the fan was causing a nuisance, then Environmental Health officers could issue a noise abatement notice, but the applicant was satisfied that there was no statutory nuisance in relation to music. Background music was not a licensable activity. It was possible that Ms Jeffries' home was being affected by the structure of the building, because there was no soundproofing and that

that would be considered not a public nuisance, but a private nuisance. The Sub-Committee could only consider public nuisance as the licencing objectives were the prevention of crime and disorder, the prevention of public nuisance, public safety and protection of children from harm. Public nuisance was defined within law. Public nuisance had to be shown to be representative of the “cross section of the class” and therefore had to be a wider group. Public nuisance was a nuisance which was so widespread in its range and so indiscriminate that its effect would not be reasonable to expect one person to take proceedings on their own responsibility to put a stop to it, but it should be taken on the responsibility of community at large. It would be wrong for the Licencing Sub-Committee to say that it would not grant the applicant on grounds of nuisance, because Ms Jeffries was the only person that was within the immediate vicinity raising the issue of noise breakout. The premises had been operating music through a noise limiter. Officers of the Council had not witnessed any issues arising with the breakout of patrons, noise or music noise. The premises was operating a restaurant and wanted to operate within policy hours now. The Licensing policy stated that for Sunday to Thursday, for a pub in a residential area, the terminal hour should be 23:30 (with patrons having left by 00:00), for Friday and Saturday, the terminal hour should be 00:00 (with patrons having left by 00:30). The application clearly fitted within the scope of the Licencing policy. As a business, the applicant needed the terminal hour of 00:00 on a Friday and Saturday to make two sittings of patrons operable. The Police had not raised any issues on crime and disorder. The Licencing Authority had not raised an objection on basis of any licencing matters and if there were representations from three residents outlined on pages 35, 39 and 41 of the agenda papers, these had been dealt with including the resident outlined on page 41 of the agenda papers whose representation was very generic and more concerned about the pub in the area. The only person that had attended the Sub-Committee was Ms Jeffries, but ultimately, in a whole area, there were very few representations against an application that had been made. The public had 28 days to raise an objection. The operation was being responsible and had offered neighbours on next door flats if they wanted to have acoustic engineer attend. Residents had been written to through the licencing authority If anyone wanted to make contact with the applicant who was open to having discussions. Any decision made by the Sub-Committee must be evidence based and this application should be granted. The area was a mixed commercial area and it was not unreasonable for a commercial premises operating as a restaurant to have a terminal hour of 00:00. The Licencing policy embraced growth including employment. A total of 52 people would be employed. The applicant had invested £1.7 million into the building. The business was food led and the premises had been fitted with noise limiter. Staff had also been trained.

At 9:12pm, the Sub-Committee adjourned to consider the application.

## RESOLVED

The Licensing Sub Committee (“LSC”) carefully considered this application for a new premises licence for 454-460 West Green Road, London N15 (“the premises”). In considering the application, the Committee took account of the London Borough of Haringey’s Statement of Licensing Policy, the Licensing Act 2003, the Licensing Act 2003 section 182 Guidance, the report pack and written and oral representations made by the Council’s Noise Team, the applicant (via his agent David Dadds, solicitor from Gordon Dadds “Mr Dadds”) and objectors. Two objectors made oral representations a Responsible Authority (the Council) and one neighbour.

The Committee excluded from its consideration the representations appearing at pages 29-32, and 37, of the original report pack, and pages 1-14 of the additional pack, which it appeared had been made after the period for representations expired on 28 September 2023.



Having considered the application and heard from all the parties, the LSC resolved to grant the Premises Licence, but limited to the same licensable activities and hours and subject to the same conditions as the existing premises licence (see Reasons) granted on 21 August 2023.

Reasons:

The LSC were satisfied that the Prevention of Public Nuisance (“PN”) licensing objective would be undermined by grant of the licence for the additional hours applied for.

The LSC considered the application for a new licence at the premises, covering Sale of Alcohol on the premises, and provision of Late Night Refreshment and Regulated Entertainment (by way of recorded music).

The premises are located at 454-460 West Green Road and front directly onto that road. To the rear, there is a shisha area extending to the rear boundary covered by a retractable roof.

There is an existing premises licence covering the premises, granted on 21 August 2023, permitting:

Supply of Alcohol (on the premises)

Regulated Entertainment: Recorded Music

The licence permitted these licensable activities for the following hours:

Monday to Friday	0900 to 2300
Saturday	0900 to 2330
Sunday	0900 to 2200

The stated premises opening hours were the same as the permitted hours for licensing activities; save that the rear external area was to be in use only to 2300, and shisha activity stopped and the roof closed at 2200.

The new application was for a new premises licence in similar terms to the existing licence save that the specified hours for the licensable activities permitted under the existing licence were to be:

Monday to Sunday 0900 to 0000

The application also sought a licence for provision of late night refreshment during the hours:

Monday to Sunday 2300 to 0000

Opening hours under the new application were to be:

Monday to Sunday 0900 to 0030

The Responsible Authority gave evidence that the operating schedule as proposed would conflict with conditions imposed on the planning permission granted for the premises.

The neighbour gave oral evidence confirming her written representations (at p35 in the original report pack) and that the noise nuisance she suffered from both loud music and the fan had continued until the day of the meeting, although the fan had that day been moved. She lives in a ground floor flat adjoining the rear part of the premises.

As to the fan, she stated that this nuisance continued during the evening until the restaurant ceased operating.

As to the music she stated, and Mr Dadds in questioning confirmed, that there is a DJ booth at the premises (albeit this is not shown on the plan), although there was a dispute as to its location.

She also stated, in answer to questioning, that she had on occasion, on complaining to the staff, been told that they could do nothing because a private party was in progress.

She confirmed that loud music was played past licence hours (hence the interference with her sleep mentioned in her written representations); she did not accept that it was simply background music.

Mr Dadds made both opening and closing submissions. In his submissions he stated that all music goes through a noise limiter, which was currently set at 65dB, having been reduced by 5dB some 3 weeks ago and which he submitted could not be bypassed. He further submitted that music at that level was at background level and noted that the Licensing Officer had confirmed that background music is not a licensable activity. There was, he said, no dancing and while music was played according to mood, it was always limited in level.

The acoustic engineer report lodged in support of the application confirms that at 65dB inside the premises noise at the boundary of the house to the rear of the premises did not exceed 51dB, background noise, which was the background level at that point. Mr Dadds confirmed that on his own visits to the restaurant he had been unable to hear music standing outside.

He offered a condition that the noise limiter be set at 65dB, including limitations at specific frequencies.

He submitted that the neighbour was affected more than others in the community, who did not suffer that nuisance. He surmised that this could be because of the structure and soundproofing of the wall between the premises and her flat.

The objector at Waldeck Road, he submitted, could not hear music from the premises; and the lack of objection from others between the premises and that address was evidence that this objector had not done so.

He acknowledged that there was a fan which had emitted some noise, but submitted that it had been refitted and that had remedied the noise problem.

He also relied upon the lack of action by the Council's officers in relation to noise, and that on 3 unannounced proactive visits no noise issue was raised.

He referred to the policy hours in relation to pubs in residential areas, which his client's application matched as to the weekend, although it sought the same hours throughout the week which represented an additional half hour for Mondays to Thursdays. He stressed however that the application was for a restaurant in a semi-commercial area.

The LSC first discounted the issue relating to planning permission and accepted that while, to operate the hours applied for would be in breach of the permission in place, it was not open to it to refuse the application on that basis.

It then went on to consider the representations of the neighbour and the Waldeck Road objector.

As to the fan noise, the LSC noted Mr Dadds' concession that it had been giving some noise, but that work had been done to remedy it. There was however no evidence beyond his submission that that had cured the problem, and noted further that the neighbour had made representations that it had been moved on the day of the meeting, which suggested that the work had not remedied the noise.

As to the music, the LSC was faced with a conflict. It acknowledged Mr Dadds' submission, based on the presumed use of the noise limiter, that the limiter would prevent noise above background being heard outside the premises; and that there might be something in the construction of the party wall between the premises that led to the neighbour being particularly affected by noise.

There were however two representations to the effect that significant music noise was audible outside the premises that, in the case of the neighbour, affected her sleep; but if that were correct, then that suggested that, contrary to Mr Dadd's submission, the limiter was not always being used, or it was being bypassed.

The LSC found the objector credible as to the noise she was experiencing. It accepted her evidence that the noise was not limited to background noise. It also accepted her evidence that the excessive noise was particularly evident late in the evening, after licensed hours. Further, there was no evidence before it identifying anything in the construction of the party wall that might have led to her experiencing elevated noise levels. It was not prepared to draw Mr Dadds' inference that the fact that there were so few representations meant that no others in the area were experiencing the nuisance; particularly, if, as the LSC accepted, the Waldeck Road objector had heard excessive noise.

It acknowledged that that implied that the noise limiter was not always used as submitted, or alternatively that it was bypassed – or that indeed it was ineffective.

It did not therefore, in all the circumstances, accept that either the music or the fan noise was merely a private nuisance, but took the view it amounted to a public nuisance.

It was the LSC's view that the public nuisance was not capable of remedy by appropriate conditions, noting in particular the failure of what the applicant represented as consistent use of the noise limiter, and the particular impact of continuation of the nuisance late into the evening.

For these reasons the LSC decided that the application if granted for the hours beyond the existing licence would undermine the licensing objective of prevention of public nuisance during those hours, and decided to grant the licence only in the same terms as the existing licence.

CHAIR:

Signed by Chair .....

Date .....