
Mr D Dadds

Your ref:

Date: 13th November 2023

Our ref:

BY EMAIL

Dear Sir,

COMMITTEE HEARING RESOLUTION

Application for a New Premises Licence under the Licensing Act 2003 – 454-460 West Green Road, London N15 – Noya London Limited – Special Meeting 6 October 2023

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 Dadds LLP Licensing Solicitors “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.

Appeal Rights

This decision is open to appeal to the Magistrates Court within the period of 21 days beginning on the day upon which the appellant is notified of the decision.

Yours sincerely,

Daliah Barrett-Williams
Licensing Team Leader

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