MINUTES OF THE SPECIAL LICENSING SUB COMMITTEE
TUESDAY, 24 NOVEMBER 2009

Councillors Beacham, Demirci and Dodds

SLSC01.	**ELECTION OF CHAIR** **RESOLVED** That Cllr Dodds be elected Chair for the meeting.	
SLSC02.	**APOLOGIES FOR ABSENCE** There were no apologies for absence.	
SLSC03.	**URGENT BUSINESS** There were no items of urgent business.	
SLSC04.	**DECLARATIONS OF INTEREST** There were no declarations of interest.	
SLSC05.	**SUMMARY OF PROCEDURE** **NOTED**	
SLSC06.	**APPLICATION FOR A REVIEW OF A PREMISES LICENCE AT KARMENZ RESTAURANT, 192 STROUD GREEN ROAD, N4** The Licensing Officer, Ms Barrett, presented the report on an application by Environmental Health (Noise) Team for a review of Karmenz Restaurant, 192 Stroud Green Road, London N4 on the grounds of the licensing objectives Prevention of Public Nuisance and Prevention of Crime and Disorder in relation to complaints regarding noise, patrons congregating on footpaths, unlicensed activities and operating beyond the permitted hours. Ms Barrett reported that a variation to the existing premises licence had been applied for and heard at a meeting in May 2009, at which a number of representations had been submitted by local residents. A varied licence, including the provision of regulated entertainment and an extension of opening hours, had been granted on condition that the new licence could not be used until an acoustic report had been submitted and a number of works carried out. It was reported that, despite this condition not being complied with, regulated entertainment had been taking place at the premises, and letters had been sent to the licensee reminding them of the need to comply with the conditions of the varied licence before this could come into force.	

In response to a point raised by a local resident, Ms Barrett confirmed that the original date for the hearing had been cancelled due to the unavailability of the parties, and that all parties had been informed immediately of the re-scheduled date.

Mr Malcolm, Enforcement Response Service Manager, confirmed that the review had been sought on the grounds of the prevention of public nuisance and the prevention of crime and disorder. Mr Malcolm reported that instances of noise nuisance, disorder, unlicensed activities and exceeding the permitted opening hours had been witnessed and that the review had been called as a result of the numerous complaints received regarding the premises. An application for a licence variation for regulated entertainment and increased hours had been agreed by the licensing committee in May 2009, but conditions had been imposed on the new licence which had not been complied with. Mr Malcolm reported that the Council was not satisfied that the acoustic requirements had been met and that a letter had been sent to the licensee to remind her of the need to comply with the conditions of the varied licence. Mr Malcolm presented a summary of the occasions on which the noise team had attended the premises in response to complaints, and requested that the Committee revoke the licence as the licensee had shown disregard for the Licensing Act and the licensing objectives.

In response to a question from the Committee, Mr Malcolm confirmed that the noise team was not satisfied that the acoustic work undertaken was compliant, as it had not been possible to set the sound limiter at the nearest premises due to the refusal of the resident of the nearest property. Mr Malcolm clarified that this would mean that the original premises licence was still in force, as the conditions of the varied licence had yet to be met. In response to a question from the Committee regarding the application of the licensing objective relating to crime and disorder, Ms Barrett confirmed that case law had established that operating licensable activities for which a licence was not held constituted a criminal offence.

The licensee's representative asked when the Council had formally advised the licensee that the acoustic work undertaken was not acceptable. Mr Malcolm referred to correspondence sent from the Council to Ms Singh reminding her of the need to comply with the conditions of the varied licence, and advised that he had spoken in person to the licensee to explain that the acoustic report was not acceptable to the Council, but did not have a record of when this conversation had taken place. The licensee's representative asked what the specific licensing offences

were on the occasions referred to in the noise team's representation. Mr Malcolm reported that the offences were opening beyond the permitted hours and carrying out a licensable activity for which no licence was in place, namely regulated entertainment. In response to a request from the licensee's representative, Mr Malcolm clarified that music was audible from the premises at 0300 on 23 August 2009 and that music was audible on 6 September 2009.

Joyce Golder, Legal Services, asked whether there was a record of whether the licensee had been spoken to personally, on the occasions listed in the schedule, regarding the concerns raised. Mr Malcolm referred to the correspondence and notes from the occasions listed and reported that a letter had been sent on 20 July 2009, referring to the events of 18 July, but that there was no note of the discussion held with the licensee. It was noted that a discussion had been held with the licensee regarding music being played on 23 August 2009, but no letter relating to this incident was on file. There was no record on file regarding discussions held on the other occasions listed. Mr Malcolm reported that, as standard, a letter should be sent to follow up discussion with a licensee regarding any licensing breach, by first class post to their home address and business premises, copies of which should be kept on file. Ms Golder asked whether there was any record of the licensee stating that an acoustic report had already been submitted in the course of any of the conversations with the noise team, and it was reported that there was no record of this.

A local resident referred to local concerns regarding noise nuisance and litter from the premises, and gave details of the dates on which he had called the noise team regarding noise nuisance from the premises, outside of its licensed opening hours. It was reported that the premises was quiet during the week, but caused a lot of noise and disturbed local residents at weekends. It was also reported that customers of the premises standing in the alleyway outside made this access very threatening.

In response to a question from the licensee's representative, the local resident reported that the noise team had visited the premises in response to his calls, but had not been inside his home to assess the noise nuisance.

The licensee's representative reported that it was notable that the police had not made any representation, as crime and disorder was one of the grounds on which the review had been brought. He reported that further information on the case-law relating to the operation of licensable activities for which a licence was not in force was needed before he

would accept the point that this constituted crime and disorder under the Licensing Act. It was reported that the licensee had managed the premises for a period of five years, and had carried out the acoustic work required by the Council at the previous hearing, but had not been advised by the Council that the work undertaken was not sufficient. The licensee's representative suggested that the work carried out was sufficient, as steps had been taken to adjust the sound limiter to a reasonable level. He reported that the occupant of the nearest sound sensitive premises was within their right not to comply, in which case it would be necessary to set the limiter to the next nearest property. It was reported that the licensee had submitted an acoustic report and, having never been notified by the Council that this was not acceptable, had assumed that this was satisfactory. The licensee reported that she had not been receiving all her post and had advised the Council of this.

The licensee's representative contended that it was not an offence for the licensee to operate beyond the permitted opening hours if no licensable activities were taking place. It was reported that the licensee was trying to address the residents' concerns regarding noise nuisance but it was noted that no statutory nuisance had been observed from within residents' homes and that the complaints received were from before the installation of the sound limiter. There were still some minor works to address noise issues to be completed, and the licensee was willing to offer further conditions to address the concerns of residents, for example limiting the number of smokers permitted outside at any one time to five. It was reported that the licensee was in difficult personal circumstances, and that during this time she would be happy to agree for someone else to replace her as DPS at the premises.

A local resident asked how the licensee proposed to address the issue of the premises opening beyond its agreed hours, in response to which the licensee's representative agreed that on occasion the opening hours had been exceeded and that a new DPS would ensure that management arrangements were stronger to make sure that hours were not exceeded. It was also suggested that local residents could be given prior warning of any private parties that would be going on late. The licensing officer clarified that if there was any charge to hire the room or for attendance then music and dancing would constitute licensable activities and would be covered by licensing law, regardless of whether these were called private parties. The licensee's representative confirmed that the parties referred to were for family and friends, for which no charge at all was made, and were therefore not licensable. The licensee offered to cease holding any private parties in the premises

if this was a concern, as a concession to local residents.

In response to a question from the Committee, it was reported that the licensee had delivered the acoustic report by hand in July, as soon as it was received, and Mr Malcolm confirmed that the report had been received by the Council on 20 July 2009. The Committee asked whether the licensee had told the Council that she was not receiving her post, in response to which the licensee reported that she had advised the Council of this but was not sure when this was and that it may have been when the acoustic report was hand-delivered. In response to a question from the Committee regarding the licensee's understanding of the conditions imposed when the variation of the licence was granted in May 2009, it was reported that the licensee believed that once the acoustic report had been submitted, the condition had been complied with. The licensee accepted that this had been a misunderstanding. In response to a question from the legal officer, the licensee reported that she had never received a letter accepting the acoustic report submitted, and that she could not recall whether she had received written confirmation of the decision of the Committee in May 2009. The licensee's representative confirmed that the licensee had not been receiving all her post, and that her understanding of the decision of the meeting of the Licensing Sub Committee she had attended in May 2009 was not as clear as it could have been.

In response to a question from the Committee, the licensee's representative expressed concern regarding the inconsistency in the evidence of offences provided by the noise team. The licensee was able to confirm that three of the occasions were private parties held at the venue, but that she did not recall the other occasions listed.

Ms Golder reported that a variation to the licence had been granted in May to permit the provision of regulated entertainment, but that this was not to be used until such time as a scheme of works drawn up by acoustic consultants had been implemented to the satisfaction of the Council. Although the premises had been operating as though the varied licence was in force, it was reported that, as the conditions on which the variation had been agreed had not been complied with, the variation should not yet be used. Ms Golder advised that the crime and disorder licensing objective could be taken into account without representations being received from the Police, and that it had been established that the issues of crime and disorder could be considered separately from one another. The licensee's representative reported that there was no evidence of any criminal offence in the documentation.

In conclusion, the local resident stated that until the licensee could prove their ability to comply with the conditions in place on the licence, there should be no extension to the licensable activities.

Mr Malcolm reiterated the grounds for the review and urged the Committee to revoke the licence or impose stringent measures until the licensee had demonstrated that they would comply with the licence conditions.

The licensee's representative concluded by asking the Committee not to revoke the licence. He reported that the licensee had been going through a difficult time and believed that she had complied with the conditions of the licence in fitting a sound limiter and that she now fully understood that no regulated entertainment could be used until the acoustic works had been approved by the Council. It was also stated that the additional conditions offered by the licensee should address the concerns of local residents. The Committee was asked to exercise their discretion, and to realise that in revoking the licence they would be taking away a large part of the licensee's income.

The Committee adjourned to deliberate.

The Committee reconvened, and the legal officer made representations on the status of the varied licence which, it was contended, had no status as the conditions on which it was based had not been met. It was suggested, on this basis, that the only licence in force was the original licence which did not include regulated entertainment, and that this was the only licence that could be considered by the Committee under this review. The licensee's representative disagreed with this position and did not accept that the varied licence granted in May had no status. The licensee's representative stated that this was a decision for the Committee to take.

RESOLVED

The special licensing sub committee considered quite a novel point in relation to the matter at the hearing. The brief background was that Karmenz Restaurant had a premises licence, number LN00002125, permitting the supply of alcohol and provision of late night refreshment, the opening hours of the premises being Monday to Saturday 0800 to 0000, Sunday and Bank Holidays 0800 to 2300, and subsequently applied for a variation to the aforementioned licence on the 14 May 2009, principally to include the provision of regulated entertainment, namely live and recorded music and an increase in opening hours of the

premises. Whilst this was granted by the Committee, it was conditional on the applicant implementing a scheme approved by a noise consultant to the satisfaction of the Council and on both the licence and the written decision it stated that the applicant could not use the premises licence until she had satisfied that condition. It was made clear in evidence provided by the authority and the applicant herself that, despite the applicant being confused as to the meaning of the condition, the Council had not to date shown themselves to be satisfied that that condition had been met. The Committee therefore considered the varied licence not to be in force and that it therefore could not be reviewed. The Committee reverted to the only premises licence currently in force, to consider the application for review made by the Environmental Health Noise Team.

Based on the representations heard by all parties at the hearing, and with due weight given to all representations, it was the Committee's decision to suspend the original premises licence for a period of two months, namely until the 25th January 2010, effective immediately, at which time the applicant would then be permitted to operate under that premises licence number LN00002125. The Committee gave the applicant the opportunity to operate under the premises licence number LN000003217, dated 14 May 2009, from the 25th January 2010 only if its conditions were met to the satisfaction of the Council, which satisfaction should be conveyed in writing by the Council to the applicant. Until such time, the varied premises licence would not take effect.

The Committee's reasons for the decision to suspend the premises licence for two months was because the Committee had given due weight to the representations given by the noise team and the local resident under the prevention of public nuisance licensing objective. The Committee felt that these were compelling and clearly outlined a serious concern and therefore warranted a serious response. The Committee reminded the applicant of the responsibilities imposed on her as the premises licence holder and DPS to ensure compliance with the Licensing Act 2003 at all times.

The meeting closed at 22:00hrs.

Cllr Ray Dodds
Chair