

## Licensing Sub-Committee

Meeting held on Wednesday, 4 December 2024 at 10.30 am. This meeting was held remotely.

### MINUTES

**Present:** Councillor Patsy Cummings (Chair);  
Councillor Mohammed Islam (Vice-Chair);  
Councillors Stuart Collins

### PART A

62/24 **Appointment of Chair**

It was MOVED by Councillor Islam and SECONDED by Councillor Collins and RESOLVED to appoint Councillor Patsy Cummings as Chair of the meeting.

63/24 **Disclosure of Interests**

There were none.

64/24 **Urgent Business (if any)**

There were no items of urgent business.

65/24 **Licensing Act 2003 - Temporary Event Notice subject to Environmental Health Objection Notice at Whispers Bar, 5 High Street, Purley, Croydon, CR8 2AF**

The Chair outlined the procedures for the Licensing Hearing in line with the Licensing Act 2003 and the Council's protocol.

The objector, Stanley Mushawatu, who had submitted representations was also present.

The Head of Environmental Health, Trading Standards and Licensing introduced the application to the Sub Committee.

The Head of Environmental Health, Trading Standards and Licensing explained that the Council's pollution team had issued an objection notice that was issued following receipt of a temporary event notice from Caroline Jones

in respect of proposed licensable activities at Whispers Bar 5, High Street, Purley, and those activities were proposed to take place on the 13th and 14th of December 2024.

The Head of Environmental Health, Trading Standards and Licensing informed the Sub Committee that the premises at 5 High Street, Purley already had a premises licence in place, however, the premises licence did not permit licensing activities for the hours requested on the dates specified, which was why it was necessary for the applicant to submit a temporary event notice.

The Head of Environmental Health, Trading Standards and Licensing explained that Members had been provided with further documentation which had been supplied by both parties.

The objecting party was given the opportunity to speak. Stanley Mushawatu advised:

- The Council's pollution team started to receive complaints from the 15<sup>th</sup> December 2023.
- Officers had visited the site several times to speak to the owners to address the issues affecting the residents.
- The whispers bar was located on the High Street, opposite a block of flats.
- There were eight complainants who had raised issues regarding loud music, particularly the use of a microphone and the bass from the speaker's playing music.
- After receiving several complaints, there was joint visit with the pollution team, licensing team, the police and the anti social licensing team on the 25 August. During the visit they found that the music was quite loud around 10pm.
- Officers went to the complainants flat to see how impactful the noise levels were with the windows open and closed and they could clearly hear the base and the DJ shouting on the microphone.
- Officers then went to the bar and spoke with the manager, who asked the DJ to lower the volume however the DJ ignored the request initially, before agreeing to lower the volume after a second time of asking.
- There was an upstairs lounge where people went to relax and have drinks, during the visit officers observed several open windows.
- The bar had issues with their entrance system, most venues had a two-door system which would help stop music to escape into neighbouring properties. However, Whispers bar only had one set of doors so whenever the doorman opened the door to allow two or three people to enter the noise would escape into the neighbouring residential properties.
- Officers explained to staff at the Whispers Bar that this issue would need to be addressed as the one set of doors used for the entrance was not a long term control measure.
- A staff members pointed out that it would cost quite a lot of money to implement such measures to control the noise.

- The staff member tried to shift the blame for the noise complaints onto other premises, however, when officers visited the site this was not the case as they witnessed that the music was coming from the Whispers Bar.
- The reason officers decided to object to the temporary event notice was because they had no confidence that the management staff would adhere to best practices and no confidence that the management would come up with long term measures to address the residents' concerns.
- The pollution team had also received several calls on a weekly basis from residents in other apartment blocks, to complain that they were being affected. There was also an allegation that the premises was not complying with the proposed closing times, this was currently being investigated by the licensing team.
- Officers had logged the times that they had received the emails from the complainants but that did not necessarily mean that was the time when the residents had been affected by the noise, so there could have been a misconception.
- The pollution team were not able to constantly guide the premises owners, they needed to be independent to be able to manage site and comply with the licensing objectives.

In response to questions from the Sub-Committee the objector advised that there had not been any direct communication between those who have complained about the noise from the premises and the applicant.

In response to questions from the Sub-Committee the objector explained that officers did not always use decibel levels as a measure of noise disturbance, sometimes officers would go into the complainant's property to assess their experience with the noise. The noise levels that was observed on the night of the site visit was intrusive enough to affect any normal person in their property.

In response to questions from the Sub-Committee the objector explained that he did not see any speakers in the upstairs lounge of the premises, however, the music being played downstairs was loud enough to entertain people who were in the upstairs lounge. The flats that were being disturbed by the loud music were facing the upstairs lounge, so when the windows were open the noise would escape directly into these flats.

In response to questions from the Sub-Committee the objector explained that when he visited a residents' flat, he could clearly hear the DJ singing and shouting on the microphone, which added to the noise disturbance.

In response to questions from the Sub-Committee the objector stated that there were nine complainants for noise disturbances from the premises. Residents from several surrounding roads had complained about being disturbed by the loud music played at the Whispers Bar. The problem with whispers bar was that when the management staff were presented with the

complaints from residents, they had often tried to shift the blame to another venue.

In response to questions from the Sub-Committee the objector stated there was another premises behind the Whispers Bar, however officers made sure to also observe that premises noise levels during their site visit. The owner of the other premises had also been spoken by officers about their noise levels and the situation had improved enough for residents to stop complaining about them.

In response to questions from the Sub-Committee the objector explained that there was no smoking area in the back of the venue, so customers tended to use the front of the premises to hang out and smoke. Neighbours had pointed out that when people hung out in front of the site it did not help because they would often laugh, chant and sing along to music which disturbed them further.

## 66/24 **Exclusion of the Press and Public**

The following motion was proposed to exclude the press and public during the course of a meeting:

Pursuant to the provisions of regulation 14 paragraph (2) of the Licensing Act 2003 (Hearings) Regulations 2005, the licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public. For the purposes of paragraph (2), a party and any person assisting or representing a party may be treated as a member of the public. In light of the possibility of disclosing personal data if the photographs circulated by a party to the hearing were made available in public, members of the committee will be asked to agree to exclude the public from the hearing to enable members to view the photographs on the basis that doing so outweighs the public interest in that part of the hearing taking place in public.

After the hearing the Sub-Committee withdrew to the virtual deliberation room and RESOLVED to ISSUE A COUNTER NOTICE the application for the temporary event notice. The reasons for this decision are set out in the Statement of Licensing Sub Committee decision as follows:

The Licensing Sub-Committee considered the Temporary Event Notice (TEN) given by Caroline Jones for proposed licensable activities on 13<sup>th</sup>/14<sup>th</sup> December 2024 at Whispers Bar, 5 High Street, Purley, Croydon, CR8 2AF (the premises) and the Objection Notice submitted by Environmental Health as contained in the report of the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery together with the supplementary documentation and information provided on behalf of the Premises User for the TEN and on behalf of Environmental Health.

Members were notified that the Applicant for the TEN (Premises User) would not be in attendance but was content for the hearing to proceed in their absence. The Sub-Committee had the benefit of the written representations and video evidence submitted by the Premises User, to which they had regard. The Sub-Committee heard verbal evidence from the Environmental Health officer at the hearing. The Sub-Committee also viewed, having gone into private session, a series of video clips which the Premises User submitted to support their submissions.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003 (the 2003 Act), the statutory guidance issued under Section 182 of the Licensing Act 2003, the Council Licensing Policy and the Objection Notice, RESOLVED to ISSUE A COUNTER NOTICE on the basis that the Sub-Committee were satisfied that it would be appropriate to promote the licensing objectives to do so. The Sub-Committee considered that the objective of Prevention of Public Nuisance was most relevant in relation to their consideration of the matter.

The reasons of the Sub-Committee were as follows:

1. The premises is situated on High Street, Purley and in a small parade of shops and commercial premises with residential premises above them. The premises is on more than one level with windows facing onto the high street. There is similarly a parade of shops and commercial premises with residential premises across the road from the premises. There are a number of blocks of residential accommodation, two across the road to the right and left of the premises and there are blocks of residential premises to the rear of the premises as well in close proximity.
2. The premises is described as a cocktail bar in the TEN. There is a current premises licence for a number of licensable activities during specified times. The Premises User is the holder of the premises licence, and the Designated Premises Supervisor for the premises at which it is proposed that the temporary event take place. As the Premises User for the TEN and in her role as designated premises supervisor and holder of the premises licence, the Premises User will be responsible for the management of the premises, including the promotion of the licensing objectives such as the prevention of public nuisance in relation to the proposed event, even where the event is a hired one. The event is described as a *“private event for “in the mix” who are hosting a ticket only event and no public will be permitted”* for 120 guests.
3. The Sub-Committee acknowledged, as provided for in both the Statutory Guidance and the Council’s Licensing Statement of Policy that all parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Environmental Health (Pollution team) indicated that there is a history of noise

complaints in relation to the premises from the 15<sup>th</sup> December 2023 and that environmental health officers had visited the premises a number of times to discuss the issues being experienced by the residents and despite all their efforts to communicate with the licensee, Environmental Health did not consider that the situation had improved and this prompted the objection notice to the current application. The officer confirmed that there were numerous complainants and that these complainants were situated in a number of different locations in proximity to the premises, including at a block of flats on the opposite side of the road, premises which are behind the high street and some who are on the same side of the road as Whispers Bar is located. The most affected complainants live in Calum Court which is slightly opposite the Whispers Bar.

Environmental Health have previously raised concerns with the premises as to noise nuisance emanating from the premises and the complaints lead to a joint visit with the Environmental Health officers, Council licensing officers and Police licensing officers which took place on the evening of Saturday 24<sup>th</sup> of August 2024. The officer detailed issues on Saturday 24<sup>th</sup> August 2024 where he personally attended (along with colleagues from the Licensing Team and the Police) with a view to assessing the issues complained of. The Environmental Health officer described how he attended at a complainant's home to assess the degree of nuisance and music could clearly be heard as could the bass and DJ shouting on the microphone even with windows of the complainant's flat closed. The Officer expressed the view that the noise levels were such that no reasonable person could be expected to be able to sleep. Officers then attended the premises to satisfy themselves as to the location of the noise affecting neighbouring residents and were satisfied that the issues were located at Whispers' Bar. The Environmental Health officer indicated that in his view, the main reason for the continued noise escape from the premises was due to the premises in question not having a double door system as many venues in the area do, which would prevent the escape of noise when patrons enter and leave the premises. In addition, the officer noted that the windows of the upper floors of the building were also open at the time of his visit, which added to the nuisance being created because the noise travelled up the wide staircase and out the upper windows to disturb neighbours. The officer also expressed the view that the premises had not put in place longer term solutions to noise control to address the ongoing loud music issue.

4. Following the joint visit, the Environmental Health officer had a lengthy discussion with management at the premises where he explained the concerns, what had been observed by officers, the impact and ways in which the premises could look to mitigate the impact of disturbance on residents. During this conversation the officer indicated his view that the main escape of noise from the premises was from not having a double door access so that each time the door is opened, noise escape occurs. The open windows were also highlighted as an issue. The

management expressed the view that putting in double entry doors would be too expensive to implement.

5. The Premises User for the TEN indicated that since the event in August (which was “an MC event”) they had made a number of changes to reduce the impact of noise on neighbours: the premises is no longer holding MC events; they are limiting the number of DJ events (they indicated that they had only had four such events since August which is a substantial change as they were having them most weekends prior to that); Lowering the volume when DJ’s do attend; Ensuring that their customers keep the noise level down when outside the premises and reminding them to leave quietly when they depart. They also indicated that they had requested to be notified if/when further complaints were made as they were not convinced that their premises is responsible for the noise complained of and wanted to be given an opportunity to investigate these themselves. In their representations the Premises User indicates that they are denying that their premises is a cause of noise nuisance. The Environmental Health officer indicated that even when he personally attended the premises and witnessed the noise nuisance for himself, as detailed above, the premises were seeking to blame other premises in the area for the concerns. In addition, when the Environmental Health officer requested that the music be turned down (when he was in attendance on the 24<sup>th</sup> of August) and the manager in charge of the premises requested that the DJ did this, this was ignored by the DJ. This was followed by little later by a second request to lower the volume of the music by the officer and a second request by the manager to the DJ and only this second request was actioned. This raised concerns about the ability of the premises to properly manage the noise concerns even with the direct intervention of Environmental Health officers and brought into question the mitigation which the premises has said is now in place in relation to exerting more control over the volume of the music when DJ’s are present.
6. As part of the representations made by the Premises User for the TEN, it was highlighted that the premises is aware that their cameras have not been working properly – they describe them as working intermittently. From the evidence submitted by the premises user, this appears to have been flagged to them by the Police and the evidence provided by the premises indicates that at present, the cameras are still not fully functional despite the Police having raised the matter as an issue of concern with them. The Sub-Committee noted that there were no specific conditions imposed on the current licence pertaining to CCTV cameras and whilst it appeared that the Police had expressed concerns to the premises about ensuring that the cameras were fully functional, it was not a licence condition that they be in place so the lack was not something which the Sub-Committee would take into account in determining the TEN.
7. As detailed in the information before the sub-committee, there have been ongoing concerns about the Premises User’s ability or willingness

to work together in partnership with among others, Environmental Health (pollution team) who are one of the responsible authorities under the Licensing Act 2003, given their previous interactions with the Premises. The Sub-Committee were concerned that there did not appear to have been any engagement between the premises and the residents to resolve their issues (for example as many other premises do: an offer of a direct contact number to all local residents that they could use to notify the premises about noise issues directly) but also noted that the residents had expressed to the Environmental Health officer that they had not engaged directly with the premises as they did not consider that they would be heard. The Sub-Committee were also mindful that there were several residents who had raised concerns (not just one or two) and not just from one locale, but a number of different residential premises in proximity to the premises who had identified the premises as the source of the noise concerns they were suffering.

8. The current premises licence requires that licensable activities (sale of alcohol and regulated entertainment) in the premises cease by midnight Monday to Saturday and 23h00 on Sunday and the provision of hot food or drink to cease by 23h30 Monday to Saturday. There are no specific conditions seeking to address noise nuisance currently imposed on the premises licence. This does not, however mean that if the activities of the premises are causing noise nuisance that they do not have any responsibilities to mitigate this nuisance. The prevention of public nuisance is one of the four licensing objectives; and all operators have a duty to work to support those in how their operations are delivered and if residents or responsible authorities were not satisfied that a premises were adhering to and promoting the licensing objectives, they are able to apply for a review of the premises licence. The Sub-Committee were clear, however, that they were not considering such a review at present, but an objection to a proposed temporary event.
9. TENs may be given in respect of premises which already have a premises licence to cover licensable activities not permitted by the existing authorisation. The TEN proposes what is essentially an extension to the provision of licensable activities at the premises for a specific event. The Sub-Committee were considering whether, for the purposes of this Temporary Event Notice and in light of the information before them, the promotion of the licensing objectives (including prevention of public nuisance) would require that they permit the temporary event to go ahead, issue a counter notice preventing the event from going ahead, or seek to impose conditions on the TEN.
10. In this latter regard, the 2003 Act provides that the Sub-Committee can impose conditions on a TEN from the existing conditions on the premises licence at the venue but only where these are appropriate for the promotion of the licensing objectives. The Sub-Committee acknowledged that there are restrictions on the nature of the conditions which could be imposed on a TEN where the proposed premises has



an existing licence. The Sub-Committee, if it were minded to impose conditions, would only be able to impose those conditions which are already on the existing licence and only to the extent that these are not contrary to the proposed purpose of the TEN. As indicated above, the Sub-Committee noted that there were no conditions on the current licence which could potentially be sought to be imposed which would, in their view, address noise nuisance concerns, therefore in terms of actions which the Sub-Committee could usefully take, it was not considered that this presented a viable resolution.

11. As with many regulatory activities undertaken by the Council, in interventions at licensed premises, the Sub-Committee were mindful of the general expectation, in relation to enforcement, that it be part of a stepped/graduated approach (save in circumstances such as those of serious crime and/or disorder, closure orders or similar). It is clear that Environmental Health (pollution team) as a responsible authority under the Licensing Act 2003 have had discussions with the premises and alerted them to the issue which arose in August. However, there have been subsequent complaints of noise nuisance alleged to be from these premises, most recently: two on the 2<sup>nd</sup> of November (at 22h28 and at 23h17) two on the 15<sup>th</sup> of November (at 22h10 and at 22h47), one on Sunday the 24<sup>th</sup> of November at 01h55 and one on Saturday 30<sup>th</sup> November 2024. This latter complaint was after the application for this TEN and subsequent to receipt of the objection notice by the premises user and subsequent to the measures being put in place by the premises to ostensibly contain the noise nuisance complained of. In relation to the times of the complaints referenced above, the Environmental health officer confirmed that the times set out were the times at which the complaint itself was received by the Council, rather than the time at which the complainant reported that the noise nuisance had arisen. In respect of the above incidents referenced by Environmental Health, these were not witnessed by Council officers and are disputed by the premises.
12. In support of the assertion that the premises is not responsible for the noise being complained of, the premises submitted a series (of intermittent) short videos showing video and audio of the front camera of the premises from 2 November 2024 from 22h26 to 22h37 showing two and then three people smoking and talking outside who are clearly audible even though they are not directly beneath the camera location but further along the road, appearing to be standing outside a neighbouring premises. The doors to the premises appear to be open but there is also no music audible during the clips. It is not clear whether those visible in the videos are patrons of the premises or not, but they refer to one being too drunk to drive which would indicate that they were indeed such patrons and at one point one of the people visible shouts down the road to someone leaving. The application for a TEN states that there will be two SIA door supervisors at the proposed event from 19.30pm to 01:30 am and indicates that these will be their usual SIA door supervisors who are familiar with their premises and

staff. There are no SIA door supervisors visible in the video clips and no one visible monitoring noise levels outside. The Sub-Committee, as indicated above, noted that there was no music audible in the clips in question but were also clear that noise nuisance does not just arise as a result of music but could also arise from patrons not being adequately managed outside the premises so that their loud conversations or, as seen on the video clips, shouting down the road, could also disturb neighbours. The Sub-Committee were concerned at the volume of noise created by just a couple of apparent patrons when the proposed TEN and subsequent representations did not suggest any specific measures (other than two SIA door supervisors) to adequately manage a group of up to 120 guests, for example how the entrance queue would be managed, how smoking outside would be managed, whether doors and windows would remain closed during the TEN, how many people would be permitted outside at any one time to mitigate noise, how it would be ensured that patrons who did not hold tickets would not be permitted in.

13. Only the police or Environmental Health are able to object in relation to a Temporary Event notice. Whilst there had not been police objections in relation to the TEN at the premises, the Sub-Committee had objections from Environmental Health on noise nuisance grounds.
14. The Licensing Act 2003 enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in relation to specific premises licences. The Statutory Guidance indicates that it is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and/or unreasonable. The impacts of the conduct or failure to make proper adjustments to mitigate the harms, were detailed by the Environmental Health officer which details his involvement including his attendance at a residents' home and the impacts observed including impeding residents' ability to sleep, disturbance from noise (music, bass and shouting on the microphone) preventing residents from having the ability for peaceful enjoyment of their own homes and associated adverse impacts in terms of stress and anxiety. The representations also detailed that there were several residents which had raised complaints about the premises including since 15<sup>th</sup> December 2023 and subsequent to the TEN being submitted and the Objection notice being notified to the premises user.
15. The Sub-Committee were also mindful that Paragraph 2.22 of the Statutory guidance provides that whilst public nuisance is given a statutory meaning in many pieces of legislation it is not narrowly defined in the 2003 Act and retains its broad common law meaning. *"It may include in appropriate circumstances the reduction of the living*

*and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.”*

16. The Sub-Committee is satisfied, on the basis of the information presented to them, including the descriptions of the detrimental impacts on residents that the concerns which have been raised fall within their remit to consider as potential public nuisance in relation to the prevention of public nuisance licensing objective. The Sub-Committee also noted the close proximity to the premises of a number of blocks of flats directly to the rear of the premises and residential premises above the shops in the parade in which the premises is situated as well as residential blocks across the road from the premises.
17. The Sub-Committee were mindful that all licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. The determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. The Sub-committee took into account the provisions within the Statutory Guidance at paragraph 9.44 which provides that determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.
18. The Sub-Committee, having regard to the above paragraph, the interventions and concerns detailed by Environmental Health, were not satisfied as detailed in paragraph 10 above, that conditions on the existing licence could adequately manage the concerns raised should the Premises User be permitted to undertake the activities proposed in the TEN. Whilst the Premises User indicated that they had put measures in place with a view to mitigating the concerns raised by residents, which the Sub-Committee appreciated, the Sub-Committee did also take into account the view of the Environmental Health officer that the suggestions were not sufficient to mitigate the harm being caused to the residents. The Sub-Committee did not accept that the complaints, which specifically identified the premises in question,

should be disregarded or ought to be attributed to another premises as has been suggested by the Premises User.

19. On this basis, and in light of all the foregoing, the Licensing Sub-Committee determined that a counter notice in respect of the Temporary Event Notice by Caroline Jones for proposed licensable activities on 13th/14th December 2024 at Whispers Bar, 5 High Street, Purley, Croydon, CR8 2AF (the premises), be issued in accordance with s105 of the Licensing Act 2003.

The meeting ended at 2.31 pm

**Signed:**

**Date:**

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