

Licensing Sub-Committee

Meeting held on Tuesday, 23 July 2024 at 10.30 am. This meeting was held remotely.

MINUTES

Present: Councillor Mohammed Islam (Vice-Chair);
Councillors Margaret Bird and Danielle Denton

PART A

24/24 Appointment of Chair

It was **MOVED** by Councillor Bird and **SECONDED** by Councillor Denton and **RESOLVED** to appoint Councillor Mohammed Islam as Chair of the meeting.

25/24 Disclosure of Interests

Councillor Denton disclosed that the application was in her ward, however she had not any previous involvement with the applicant or the venue and had not received any complaints regarding the application and so she would be able to consider the application with an open mind.

26/24 Urgent Business (if any)

There were no items of urgent business.

27/24 Licensing Act 2003 - Temporary Event Notice subject to Environmental Health Objection Notice at The Corner House, 1 South End, Croydon, CR0 1BE

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

The applicant, Mr Alexander, was present.

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 objected to an application for a temporary event notice for the proposed licensable activities for the 28 July at The Corner House, 1 South End, Croydon. The temporary event notice intended to use the whole premises for a 40th birthday party and from midnight on the 28th of July to 3:30 am with all attendees out by 4:00 am, and the application was for the sale by retail of alcohol, the provision of regulated entertainment and the provision of light refreshment.

The Head of Environmental Health, Trading Standards and Licensing informed the Sub Committee that the DJ would play music on the club's sound system, and this would serve as the regulated entertainment.

The Head of Environmental Health, Trading Standards and Licensing explained that the temporary event notice required a separate permission to a premises licence, so the conditions on the premises licence did not automatically apply to a temporary event notice.

The Head of Environmental Health, Trading Standards and Licensing informed the Sub Committee that once the consultation period had ended, either party was able to provide further information in support of their position and the pollution team officer provided further information for Members consideration.

In response to questions from the Panel the Head of Environmental Health, Trading Standards and Licensing explained that the licensable activities were from 12am to 3am on the 28 July and music would be played throughout the duration of the event.

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

- That he had dealings with Corner House since October 2023.
- There had been complaints after hours regarding loud music and the use of the microphone.
- On occasions he had witnessed the noise nuisance himself.
- He went to the premises to speak to the management and Mr Alexandra was not on site.
- Whenever he had engaged with Mr Alexandra regarding the complaints, the situation would temporarily improve before reverting back to the initial state.
- Neighbours had some difficulty getting a hold of Mr Alexandra.
- He had delivered a community protection notice warning (CPNW) to Mr Alexandra, explaining all of the issues facing the neighbours.
- He had seen a marquee in the garden, and contacted the applicant to inform him that if the marquee was used then it may cause problems for neighbours.

- During a visit on the 30th June, officers from the licensing team witnessed Mr Alexandra using the marquee and playing loud music.
- When Mr Alexandra was advised that he should lower the music he appeared confused as if he was unaware despite previously being sent an email warning him about playing loud music in the marquee.
- Mr Alexandra agreed to lower the music when advised by the licensing officers during their visit, however when the officers revisited the site an hour later to assess the music the music was even louder than before.
- Once the temporary event notice application was received by the Council, officers objected as it would likely cause more noise pollution to the neighbours.
- Officers were yet to see a long-term improvement in the conduct at the venue.

In response to questions from the Panel the Head of Environmental Health, Trading Standards and Licensing explained that the designated premises supervisor (DPS) did not have to always be on site. However, there had to be a thread of management, so if the DPS was not on site then there must be another member of staff who could run the premises whilst the DPS was absent.

The applicant was given the opportunity to speak. Mr Alexander advised:

- He had taken over management of Corner House in August 2023.
- His company was handling security on the site before he took over the premises, so he was familiar with the site.
- He had met the objector on two separate occasions when he visited the premises.
- He had moved around the speakers to accommodate the noise.
- He had banned DJ's from bring in their own sets to avoid this issue. Security always informed DJ's to turn down the music but they don't always listen.
- He had advised neighbours to inform him if the noise was too loud so that he could reduce the noise to an appropriate level.
- He was in touch with members of the police service.
- He had opened a restaurant on the site and customers were able to eat outside.
- The jerk drum was outside to provide food for the restaurant.
- He apologised for the misstep he had previously made with the noise in the past.
- He had tried to fix air conditioning at the venue to avoid people from opening the doors for ventilation, as this led to sound from inside the venue disturbing residents.

In response to questions from the Sub-Committee the applicant advised that he had tried to adhere to the noise complaints and move the speakers around reduce the impact of the noise. The applicant explained that he made customers enter via a separate entrance among other measures. The applicant apologised for the most recent breach which caused a noise complaint.

The applicant informed the Sub Committee that the venue is often hired out for an event and the DJ's did not work directly for the applicant although they had rules and regulations to follow, so when he instructed the DJ's to turn the sound down they did not always comply. The applicant explained that he would implement a noise control system at the venue so that he could manage the noise levels independently. The applicant stated that he believed that the objector should have spoken to the bar staff rather than the DJ when he was on the premises and the bar staff would have shown him to the manager who was on site.

The Sub-Committee queried whether the applicant could state the four licensing objectives, and the applicant stated that he was unable to list all four objectives.

In response to questions from the Sub-Committee the applicant advised that a noise controller would be installed at the venue on the 29 July.

In response to questions from the Sub-Committee the applicant explained that the DJ's who play at the venue are hired by the person who booked the event. The applicant stated that in future, he would require clients to agree to the sound rules before they are able to book the venue for an event.

In response to questions from the Sub-Committee the applicant explained that he was always present on-site during events.

In response to questions from the Sub-Committee the applicant explained that customers entered the premises two at a time and exited the premises via the back door, customers were ushered away from the venue by security once they had exited the venue.

In response to questions from the Sub-Committee the applicant stated that the event had not been promoted and was a birthday celebration, he insisted that the people attending the event would not be charged.

In response to questions from the Sub-Committee the applicant stated that music would not be played in the beer garden in future.

In response to questions from the Sub-Committee the applicant explained that he did not live on the premises, however he was present on the site seven days a week and would only leave the premises once an event had finished.

In response to questions from the Sub-Committee the applicant stated that security would usher people away from the venue to prevent noise issues. The applicant explained that he was in contact with residents via text message and phone calls and was confused by the notion that he had been difficult to contact.

In response to questions from the Sub-Committee the applicant informed the Sub Committee that his security staff were Security Industry Authority (SIA) trained. The applicant also explained that he would regularly step outside of the venue during an event to monitor the noise levels from the outside.

In response to questions from the Sub-Committee the applicant stated that he had staff members who would manage the queues to avoid attendees from disturbing the neighbours.

In response to questions from the Sub-Committee the applicant explained that the residents who lived upstairs did not have any complaints with the restaurant.

The Head of Environmental Health, Trading Standards and Licensing explained that the premises licence holder could not transfer responsibility to a promoter or an individual who had hired the venue.

The objector stated that they had advised management staff to ensure that all the doors and windows were closed whilst the DJ played music, so when it was discovered that music had been played from the beer garden it seemed as though the advice had been ignored. The objectors explained that residents who had been disturbed could not reach the applicant and lived at the block of flats surrounding the venue.

The applicant stated that the police had been to the venue more often than Council officers.

After the hearing the Sub-Committee withdrew to the virtual deliberation room and RESOLVED to ISSUE A COUNTER NOTICE to 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 Mr. Shawn Alexander for proposed licensable activities on 28th July 2024 at The Corner House, 1 South End, Croydon, CR0 1BE (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.

Members also heard verbal evidence from Mr Shawn Alexander, the Sole Director of the company which holds the premises licence (and the person who gave the TEN), and the Environmental Health officer at the hearing.

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 the corner of South End and Coombe Road in a parade of shops and commercial premises with residential

premises across the road from the premises, above the premises in the parade and directly to the rear of the premises. To the rear of the premises there are a number of blocks of flats in very close proximity to the premises. The Applicant has indicated that there are no concerns which have been raised by the residents who live above the premises but that there are a number of other premises in the area and a Council estate nearby which the Applicant indicates are a cause of noise for which his premises gets the blame, especially in relation to fighting and noise in the street.

2. The premises is described by the Applicant as a wine bar and restaurant in the TEN but as a Club during his representations to Members. There is a current premises licence for a number of licensable activities during specified times. The Applicant is the Sole Director of the Company which holds the premises licence at which it is proposed that the temporary event take place. As the Applicant for the TEN, the Applicant 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. The event is described as a 40th Birthday party for family and friends with a maximum number of attendees of 130.
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. As detailed in the information before the sub-committee, there have been ongoing concerns about the Applicant'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 him. The concerns and length and nature of intervention also indicate potential problems around the ability and willingness of the Applicant to properly manage the application premises in compliance with legal requirements and in turn the licensing objectives under the Act. The Applicant detailed his extensive working hours and the efforts he is undertaking to ensure that his business is a success and whilst the Sub-Committee noted his current efforts, there remained a long-standing series of interventions from Environmental Health because of resident concerns and complaints many of which officers had personally witnessed. There is also evidence indicating that despite residents personally raising concerns with the premises as well, and the Applicant promising to be available to consider and address concerns via telephone and email, concerns from residents raised by telephone or in person and via emails go unattended and/or do not result in improved conditions for the residents. The Applicant indicated that there were a number of residents with whom he regularly and promptly dealt with so wasn't sure why others were unable to get hold of him or indeed why Environmental Health officers had issues doing so.

4. The current premises licence requires that licensable activities in the outside areas of the premises cease earlier than the indoor areas of the premises – no licensable activities are permitted beyond midnight Thursday to Sunday, or beyond 23h00 Monday - Wednesday. In addition, there are current conditions on the licence which require that speakers shall be indoors and not positioned near any openings such as doors or windows, requirements that use is made of in-house speakers rather than the speakers of artists or DJ's. In addition, following an earlier hearing by the Licensing Sub-Committee, a condition was imposed by that Sub-Committee that the premises licence holder shall permit the Council's noise nuisance team to set an appropriate noise level to prevent public nuisance around and/or within the premises.
5. 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. This is proposed against a background, as detailed before the sub-committee, of current actions which indicate potential non-compliance with existing conditions and an unwillingness to work constructively with responsible authorities to promote the licensing objectives in the operation of the premises as demonstrated by the interactions between Environmental Health, the Applicant and the Premises. The Sub-Committee were clear that they were not called upon, in determining this matter, to decide whether or not the Applicant and/or Premises Licence Holder had failed to comply with the conditions imposed on the current licence – that would be a matter potentially for a review hearing, closure order application or a matter to be considered in relation to any future potential prosecution for failure to adhere to licence conditions. 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. 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.
6. 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 issued guidance and had a lengthy engagement with the Applicant with a view to satisfactorily resolving the noise concerns being experienced by residents as a result of the

operation of the premises. This has included the need to issue a community protection notice warning and subsequently culminated in a community protection notice being served on the Applicant in respect of the operation of the premises, on 30th June 2024. A further community protection notice in respect of the same issues has been served on the owner of the premises from whom the premises licence holder rents the premises.

7. Whilst the Sub-Committee were pleased to note that no issues had arisen with TEN's which took place at the premises on 5 and 6 May, the sub-committee were concerned to hear on 7th of June 2024, the conduct of the premises under the management of the Applicant necessitated further involvement from Environmental Health and the Applicant had declined to respond to the concerns raised. Furthermore, on 30th of June 2024 the conduct of the premises under the management of the Applicant was such that it required the attendance of Council officers to provide advice to the premises/applicant regarding disturbance and nuisance. Even more concerning is the fact that despite this, a few hours later, when officers once again went to the premises, the disturbance levels had once more increased to unacceptable levels (said to be even louder than prior to the warning) despite officers' earlier intervention. That does not indicate a willingness or ability to work with responsible authorities, indicate conduct of a responsible operator nor does it support the licensing objectives. The Applicant pointed out that the DJ's responsible for the music would regularly ignore requests from management at the premises, including himself, to turn down the music at the premises and indicated to the Sub-Committee that it was the people hiring the event which were ultimately responsible for the DJ's and ensuring they acted in an appropriate manner as the premises does not employ the DJ's. The Sub-Committee were not persuaded that as the Premises Licence Holder (or the Applicant for a TEN) the Applicant could divest himself of responsibility for any potential issues (including those that detrimentally impacted on the licensing objectives) by indicating that the DJ's were not in his employ. He was and is responsible for who the venue is hired to and needs to make adequate provision to ensure that the premises is properly managed within the scope of his licence or the TEN as the case may be.
8. The Sub-Committee noted the extensive engagement with the premises and with the Applicant as detailed by the Environmental Health Officer which has spanned interventions over a period of nearly a year and in respect of which no adequate resolution appears to have been put in place by the premises or the Applicant, this despite warnings and promises of improvement. Even after the service of the Community protection notice warning, there continued to be public nuisance concerns raised as a result of noise arising from the operation of the premises as has been detailed before the Sub-Committee, which the Environmental Health officers as responsible

authorities under the Act, consider to be unacceptable and unreasonable. The Sub-Committee noted the proposals by the Applicant to now put in measures such as noise limiters and ensure that only the venue's speakers were utilised for events but this was preceded by nearly a years' worth of concerns from Environmental Health without implementation of effective measures. Whilst there had not been police intervention at the premises, the Sub-Committee were clear that they were not the only responsible authority and indeed only the police or Environmental Health are able to object in relation to a Temporary Event notice.

9. The Sub-Committee were mindful that, although the basis for a community protection notice was not a matter which was within the remit of the Sub-Committee to determine, a community protection notice, is intended to stop a natural person or a body (e.g. a legal person such as a business) continuing with conduct which unacceptably affects victims and the community. They can be issued by (among others) authorised council officers and police officers, in circumstances where there are reasonable grounds to believe the subject's conduct:

- is having a detrimental effect on the quality of life of those in the locality, and
- is unreasonable, and
- the behaviour is of a persistent or continuing nature.

The Sub-Committee also noted that the serving of the notice had been preceded by a warning notice and other pre-enforcement interventions.

10. The 2003 Act 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 licenses. 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, are detailed in the statement made by the Environmental Health officer which details his involvement including attendance at residents' homes out of hours and at the premises: these include impeding residents' ability to sleep, disturbance from noise (music and shouting and disorderly conduct) and vibrations from the bass, preventing residents from having the ability for peaceful enjoyment of their own homes, adverse impacts in terms of stress and anxiety as a result and the detrimental impact on families and young children. It is also noted that the instances where complaints have been made are not restricted to times during which the premises was entitled to undertake licensable activities nor were the concerns only

being raised on weekends, but included Sunday and week nights when there is an even greater expectation of quiet enjoyment for residents. There is nothing in the “risk assessment” for the temporary event to suggest that the concerns of environmental health or residents (or the presence of a CPN) have been considered or even addressed by the Applicant in relation to the impact of the proposed event on the licensing objectives given the circumstances that have been detailed.

11. 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.”*

In this regard the Sub-Committee noted concerns about the use of commercial drum barbeque without extractor system in place in the rear garden of the premises and the potential additional detrimental impact on residents in terms of public nuisance as a result.

12. There is a distinction to be drawn between private and public nuisance and it is the latter which is within the gift of the Licensing Sub-Committee as a licensing objective, not the former. As set out in *R V Rimmington and Goldstein [2005] UKHL 63* per Lord Bingham, “[Public Nuisance is where] the effect of the act or omission is to endanger the life, health, property... or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty’s subjects.”
13. In *Attorney General v PYA Quarries Ltd [1957] 2 QB 169* per Romer LJ [at p 184] “...any nuisance is ‘public’ which materially affects the reasonable comfort and convenience of life of a class of Her Majesty’s subjects. The sphere of the nuisance may be described generally as ‘the neighbourhood’; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected...”
14. The Sub-Committee is satisfied, on the basis of the information presented to them, including the descriptions of the detrimental impacts on residents and their young children 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 across the road from the premises and near the back gate of the premises.

15. 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.
16. The Sub-Committee were mindful, having regard to the above paragraph, of the extensive interventions detailed, and were not satisfied that conditions could adequately manage the concerns raised should the Applicant be permitted to undertake the activities proposed in the TEN. Whilst the Applicant apologised for the incident on the 30th June and indicated that he would never allow music to be played in the garden again, which the Sub-Committee appreciated, it did not negate the previous concerns or conduct which represented what appeared to be a consistent course of conduct.
17. The Sub-Committee acknowledged that there are also 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 which are already on the existing licence and only to the extent that these are not contrary to the proposed purpose of the TEN. Given the information before the Sub-Committee, they were not satisfied that such conditions would be of assistance in ensuring that the Licensing Objectives were promoted in respect of this premises so that a lesser step of imposition of conditions was not appropriate in the current circumstances to mitigate the concerns regarding support of the licensing objective of the prevention of public nuisance. 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 Shawn Alexander for 28th July 2024 at The Corner House, 1

South End, Croydon, CR0 1BE, be issued in accordance with s105 of the Licensing Act 2003.

28/24 **Licensing Act 2003 - Temporary Event Notice subject to Environmental Health Objection Notice at The Corner House, 1 South End, Croydon, CR0 1BE**

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

The applicant, Mr Alexander, was present.

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

The Licensing Officer introduced the application to the Sub Committee. 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 application was for proposed licensable activities at the corner house, 1 South End, Croydon, on 4th of August between midnight and 3:30 AM with everybody out of the premises by 4:00 AM.

The Head of Environmental Health, Trading Standards and Licensing stated that the premises is at 1 South End was a pub which already benefitted from having a premises licence issued by the Council.

The Head of Environmental Health, Trading Standards and Licensing informed the Sub Committee that the environmental health officer had provided further information in support of their position ahead of the hearing for the Members consideration.

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

- He had made several visits to the site and discussed the issues affecting residents with the applicant.
- Due to the number of calls and emails received from residents, officers had to visit the premises out of hours, and he had given residents his mobile number for them to contact him directly if there were any noise issues from the venue.
- On each occasion that he had visited the flats of resident's who had complained about noise, the base from the speakers and the DJ shouting on the microphone were intrusive enough, despite the windows in the flat being closed, for officers to take further enforcement action.
- Mr Alexander rarely responded to emails, and it was difficult to get hold of him via telephone.

- The Council's Pollution team had received reports of a marquee and the barbeque drums in the garden, Mr Alexander was sent a lengthy email warning him about using the marquee and the barbeque drums in the garden for events. Mr Alexander did not respond to this email. A colleague from the licensing team attended the event and the applicant stated he was unaware that he was not allowed to play music from the garden.
- Mr Alexander was asked by officers to lower the volume of the music and agreed to do so, however when officers returned to the event two hours later the volume was even louder.
- When the objector visited the site to investigate a noise complaint, there was no manager available on site, so officers had to ask the DJ to lower the music and refrain from using the microphone.

The applicant was given the opportunity to speak. Mr Alexander advised:

- He had called the objector in response to the email that he had received regarding the marquee and barbeque drum in the garden, and the barbeque drum has not been used since and the jerk chicken he sold was prepared in an oven.
- There were worse issues prior to him taking over the premises.
- The objector had suggested that he puts his number in the public domain so that he could be contacted.

In response to questions from the Sub-Committee the objector advised that prior to Mr Alexander taking over management of the premises, there had been complaints regarding noise from the venue.

In response to questions from the Sub-Committee the applicant advised that the event had been advertised on the promoters Instagram and an event ticket website. The applicant had been updated regularly on the number of tickets that had been sold so that he could provide an appropriate amount of security. The applicant stated that if any individuals arrived on the day of the event, then the applicant would limit the number of those individuals allowed into the venue.

In response to questions from the Sub-Committee the applicant explained that the capacity of his venue was 220 people.

In response to questions from the Sub-Committee the applicant explained that there would be no tickets served at the door, however, the legal advisor pointed out that the flyer stated that tickets can either be purchased on the door or online.

In response to questions from the Sub-Committee the applicant explained that he did not have any control on the number of people who could turn up to the event. The applicant stated that he had hosted previous events by this promoter so he was confident that he could anticipate the number of people who would turn up to the event.

In response to questions from the applicant the legal advisor informed the applicant that the statutory guidance outlined who could make an application and who could not make a TEN application. The Head of Environmental Health, Trading Standards and Licensing explained that as the venue was Mr Alexanders property, so an individual could make an application with his permission however he would still share responsibility should something go wrong at the event.

In response to questions from the Sub-Committee the applicant stated that he would have control over the noise levels made by the music and the DJ as he would have a noise limiter installed at the venue from the 29 July.

The objector stated that they hoped that Mr Alexander's noise limiter would improve things to avoid the consistent noise issues reported by residents.

The applicant explained that he was keen to work with officers and members of the community to improve things on the site. The applicant believed that the noise controller should prevent music from disturbing residents, the security staff would also usher attendees into their cars and away from the venue after events had finished.

After the hearing the Sub-Committee withdrew to the virtual deliberation room and RESOLVED to ISSUE A COUNTER NOTICE to 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 Mr. Shawn Alexander for proposed licensable activities on 4 August 2024 at The Corner House, 1 South End, Croydon, CR0 1BE (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.

Members also heard verbal evidence from Mr Shawn Alexander, the Sole Director of the company which holds the premises licence (and the person who gave the TEN), and the Environmental Health officer at the hearing.

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:

2. The premises is situated on the corner of South End and Coombe Road in a parade of shops and commercial premises with residential premises across the road from the premises, above the premises in the

parade and directly to the rear of the premises. To the rear of the premises there are a number of blocks of flats in very close proximity to the premises.

3. The premises is described by the Applicant as a wine bar and restaurant and holds a current premises license for a number of licensable activities during specified times. The Applicant is the Sole Director of the Company which holds the premises license at which it is proposed that the temporary event take place. As the Applicant for the TEN, the Applicant 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.
4. The TEN describes the proposed event as a “49th Birthday party for family and friends but will be open to the public at a charge price on the door and online”. When questioned, the Applicant appeared unaware that there were proposed to be sales on the door as indicated in the application and then was not able to address members’ concerns about how potential attendees turning up would be managed or concerns about too many turning up wishing to attend and not being able to due to restrictions on numbers. The risk assessment is also accompanied by a promotional flyer for the proposed event and the Applicant indicated that the promoter of the event had previously had an event at the premises where 130 patrons had attended.
5. The Sub-committee were concerned that the proposed event, because of the suggested sale of tickets, would be more akin to a promoted event, rather than a birthday party as has been suggested. This would clearly impact on the risk assessment which would be required and have a potentially greater impact on residents than a simple birthday celebration. Whilst there is a risk assessment accompanying the application, no additional measures appear to have been considered by the Applicant in relation to this promotion of the event and the risk to promotion of the licensing objectives this presents, especially in light of concerns highlighted by Environmental Health. In addition, the risk assessment does not specify the number of SIA door supervisors who are proposed to be at the event and one of the conditions on the current premises license requires that for any promoted event there must be a risk assessment which specifies SIA numbers and the search regime for the event and that this risk assessment must be shared with the Police 14 days before any promoted event. It is not clear whether or not this has been adhered to.
6. 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. As detailed in the information before the sub-committee, there have been ongoing concerns about the Applicant’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 him. The concerns and length and nature of intervention also indicate potential problems around the ability and willingness of the Applicant to properly manage the application premises in compliance with legal requirements and in turn the licensing objectives under the Act. The Sub-Committee were made aware that there were issues with the premises prior to the Applicant taking over the premises in August 2023, however the sub-committee also heard that these issues had not tapered off or been satisfactorily resolved with the new management. Indeed, there were a number of concerns highlighted by Environmental health since the Applicant had taken over. There is also evidence indicating that despite residents personally raising concerns with the premises as well, and the Applicant promising to be available to consider and address concerns via telephone and email, concerns from residents raised by telephone or in person and via emails go unattended and/or do not result in improved conditions for the residents.

7. The current premises licence requires that licensable activities in the outside areas of the premises cease earlier than the indoor areas of the premises – no licensable activities are permitted beyond midnight Thursday to Sunday, or beyond 23h00 Monday - Wednesday. In addition, there are current conditions on the licence which require that speakers shall be indoors and not positioned near any openings such as doors or windows, requirements that use is made of in-house speakers rather than the speakers of artists or DJ's. In addition, following an earlier hearing by the Licensing Sub-Committee, a condition was imposed by that Sub-Committee that the premises licence holder shall permit the Council's noise nuisance team to set an appropriate noise level to prevent public nuisance around and/or within the premises.
8. 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. This is proposed against a background, as detailed before the sub-committee, of current actions which indicate potential non-compliance with existing conditions and an unwillingness to work constructively with responsible authorities to promote the licensing objectives in the operation of the premises as demonstrated by the interactions between Environmental Health, the Applicant and the Premises. This was even more concerning to the Sub-Committee where it was proposed that it would be a promoted event as the risk impacts potentially increase in such circumstances.
9. The Sub-Committee were clear that they were not called upon, in determining this matter, to decide whether or not the Applicant and/or Premises Licence Holder had failed to comply with the conditions imposed on the current licence – that would be a matter potentially for

a review hearing, closure order application or a matter to be considered in relation to any future potential prosecution for failure to adhere to licence conditions. 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. 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.

10. 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 issued guidance and had a lengthy engagement with the Applicant with a view to satisfactorily resolving the noise concerns being experienced by residents as a result of the operation of the premises. This has included the need to issue a community protection notice warning and subsequently culminated in a community protection notice being served on the Applicant in respect of the operation of the premises, on 30th June 2024. A further community protection notice in respect of the same issues has been served on the owner of the premises from whom the premises licence holder rents the premises.
11. Whilst the Sub-Committee were pleased to note that no issues had arisen with TEN's which took place at the premises on 5 and 6 May, the sub-committee were concerned that on 7th of June 2024, a month later, the conduct of the premises under the management of the Applicant necessitated further involvement from Environmental Health and the Applicant had declined to respond to the concerns raised. Furthermore, on 30th of June 2024 the conduct of the premises under the management of the Applicant was such that it required the attendance of Council officers to provide advice to the premises/applicant regarding disturbance and nuisance. Even more concerning is the fact that despite this, a few hours later, when officers once again went to the premises, the disturbance levels had once more increased to unacceptable levels (said to be even louder than prior to the warning) despite officers' earlier intervention. That does not indicate a willingness or ability to work with responsible authorities, indicate conduct of a responsible operator nor does it support the licensing objectives. The Applicant pointed out that the DJ's responsible for the music would regularly ignore requests from management at the premises, including himself, to turn down the music at the premises and indicated to the Sub-Committee that it "wasn't his

event” and it was the people hiring the event which were ultimately responsible for the DJ’s and ensuring they acted in an appropriate manner. The Sub-Committee were not persuaded that as the Premises Licence Holder (or the Applicant for a TEN) the Applicant could divest himself of responsibility for any potential issues (including those that detrimentally impacted on the licensing objectives) by indicating that the DJ’s were not in his employ or that a promoted event at his premises was not ultimately his responsibility. He was and is responsible for who the venue is hired to and who undertakes promoted events at the premises and needs to make adequate provision to ensure that the premises is properly managed within the scope of his licence or the TEN as the case may be.

12. The Sub-Committee noted the extensive engagement with the premises and with the Applicant as detailed by the Environmental Health Officer which has spanned interventions over a period of nearly a year and in respect of which no adequate resolution appears to have been put in place by the premises or the Applicant, this despite warnings and promises of improvement. Even after the service of the Community protection notice warning, there continued to be public nuisance concerns raised as a result of noise arising from the operation of the premises as has been detailed before the Sub-Committee, which the Environmental Health officers as responsible authorities under the Act, consider to be unacceptable and unreasonable. The Sub-Committee noted the proposals by the Applicant to now put in measures such as noise limiters and ensure that only the venue’s speakers were utilised for events. The Sub-Committee were advised that the noise limiters would be in place at the premises by Monday (29th July) but this promise was preceded by nearly a years’ worth of concerns from Environmental Health without implementation of effective measures in respect of noise nuisance. Whilst there had not been police intervention at the premises, the Sub-Committee were clear that they were not the only responsible authority and that prevention of public nuisance was just as much one of the licensing objectives as prevention of crime and disorder.
13. The Sub-Committee were mindful that, although the basis for a community protection notice was not a matter which was within the remit of the Sub-Committee to determine, a community protection notice, is intended to stop a natural person or a body (e.g. a legal person such as a business) continuing with conduct which unacceptably affects victims and the community. They can be issued by (among others) authorised council officers and police officers, in circumstances where there are reasonable grounds to believe the subject’s conduct:
 - is having a detrimental effect on the quality of life of those in the locality, and
 - is unreasonable, and

- the behaviour is of a persistent or continuing nature.

The Sub-Committee also noted that the serving of the notice had been preceded by a warning notice and other pre-enforcement interventions.

14. The 2003 Act 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 licenses. 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, are detailed in the statement made by the Environmental Health officer which details his involvement including attendance at residents' homes out of hours and at the premises: these include impeding residents' ability to sleep, disturbance from noise (music and shouting and disorderly conduct) and vibrations from the bass, preventing residents from having the ability for peaceful enjoyment of their own homes, adverse impacts in terms of stress and anxiety as a result and the detrimental impact on families and young children. It is also noted that the instances where complaints have been made are not restricted to times during which the premises was entitled to undertake licensable activities nor were the concerns only being raised on weekends, but included Sunday and week nights when there is an even greater expectation of quiet enjoyment for residents. There is nothing in the "risk assessment" for the temporary event to suggest that the concerns of environmental health or residents (or the presence of a CPN) have been considered or even addressed by the Applicant in relation to the impact of the proposed event on the licensing objectives given the circumstances that have been detailed.
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."*

In this regard the Sub-Committee noted concerns about the use of commercial drum barbeque without extractor system in place in the rear garden of the premises and the potential additional detrimental impact on residents in terms of public nuisance as a result.

16. There is a distinction to be drawn between private and public nuisance and it is the latter which is within the gift of the Licensing Sub-Committee as a licensing objective, not the former. As set out in *R V Rimmington and Goldstein* [2005] UKHL 63 per Lord Bingham, “[Public Nuisance is where] the effect of the act or omission is to endanger the life, health, property... or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty’s subjects.”
17. In *Attorney General v PYA Quarries Ltd* [1957] 2 QB 169 per Romer LJ [at p 184] “...any nuisance is ‘public’ which materially affects the reasonable comfort and convenience of life of a class of Her Majesty’s subjects. The sphere of the nuisance may be described generally as ‘the neighbourhood’; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected...”
18. The Sub-Committee is satisfied, on the basis of the information presented to them, including the descriptions of the detrimental impacts on residents and their young children 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 across the road from the premises and near the back gate of the premises.
19. 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, 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.

20. The Sub-Committee were mindful, having regard to the above paragraph, of the extensive interventions detailed, and were not satisfied that conditions could adequately manage the concerns raised should the Applicant be permitted to undertake the activities proposed in the TEN. Whilst the Applicant asked the sub-committee to consider giving him a chance to demonstrate that he could run an event in compliance with the licensing objectives, especially once he has a noise limiter in place; the Sub-Committee did not consider that this negated the previous concerns or conduct which represented what appeared to be a consistent course of conduct which culminated in the service of a community protection notice. Nothing in this determination would preclude the Applicant from demonstrating consistent compliance in future which could be taken into account should future applications be made. Each application is considered on its own merits.

21. 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 which are already on the existing licence and only to the extent that these are not contrary to the proposed purpose of the TEN. Given the information before the Sub-Committee, they were not satisfied that such conditions would be of assistance in ensuring that the Licensing Objectives were promoted in respect of this premises so that a lesser step of imposition of conditions was not appropriate in the current circumstances to mitigate the concerns regarding support of the licensing objective of the prevention of public nuisance. 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 Shawn Alexander for 4th August 2024 at The Corner House, 1 South End, Croydon, CR0 1BE, be issued in accordance with section 105 of the Licensing Act 2003.

29/24 **Licensing Act 2003 - Temporary Event Notice subject to Environmental Health Objection Notice at The Corner House, 1 South End, Croydon, CR0 1BE**

The application was withdrawn.

30/24 **Exclusion of the Press and Public**

This was not required.

The meeting ended at 5.17 pm

Signed:

Date:

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