

# Public Document Pack



## LICENSING SUB-COMMITTEE

Wednesday, 21 December 2011 at 10.00 am  
Council Chamber, Civic Centre, Silver Street,  
Enfield, EN1 3XA

Contact: Penelope Williams  
Committee Secretary  
Direct : 020-8379-4098  
Tel: 020-8379-1000  
Ext: 4098  
Fax: 020-8379-4172  
Textphone: 020 8379 4419  
E-mail: [penelope.williams@enfield.gov.uk](mailto:penelope.williams@enfield.gov.uk)  
Council website: [www.enfield.gov.uk](http://www.enfield.gov.uk)

**MEMBERS:** Councillors Derek Levy (Chairman), George Savva MBE and Glynis Vince.

## SUPPLEMENTARY AGENDA – PART 1

### 1. **TEMPORARY EVENT NOTICE: WILLOW - 235 WINCHMORE HILL ROAD, N21** (Pages 1 - 32)

To receive, pursuant to Section 100B(4) of the Local Government Act 1972 (as amended) a report from the Principal Licensing Officer regarding an application for a Temporary Event Notice.

Licensing Sub Committee is asked to consider dealing with this application as an urgent item as the hearing must be commenced between 15<sup>th</sup> – 23<sup>rd</sup> December 2011. In accordance with Schedule 1 of the Licensing Act 2003 (Hearings) Regulations 2005, however, the period within which the Police could give the objection notice to this particular matter was only 13th-14th December 2011. This meant it has not been possible to give the usual period of notice for this item as part of the agenda for the meeting.

This page is intentionally left blank

## MUNICIPAL YEAR 2011/12 REPORT NO.

**COMMITTEE :**  
Licensing Sub-Committee  
21 December 2011

**REPORT OF :**  
Principal Licensing Officer

**LEGISLATION :**  
Licensing Act 2003

Agenda - Part	Item
<p><b>SUBJECT :</b> Temporary Event Notice</p> <p><b>PREMISES :</b> Willow 235 Winchmore Hill Road, N21</p> <p><b>WARD :</b> Southgate</p>	

1 **TEMPORARY EVENT NOTICE :**

- 1.1 On 12 December 2011 **Mr Phidias Kouttis** gave notice to the Council in respect of a proposed event at Willow, 235 Winchmore Hill Road, N21 between 11pm on Monday 26 December 2011 and 3am on Tuesday 27 December 2011. The proposed event will include the provision of the sale/supply of alcohol, regulated entertainment and late night refreshment for 400 persons.
- 1.2 A copy of the Temporary Event Notice ('TEN') is attached as Annex 01.

2 **OBJECTION NOTICE :**

- 2.1 The Chief of Police is satisfied that allowing the premises to be used in accordance with the TEN would undermine the crime prevention objective. On 13 December 2011 the Police gave notice to that effect.
- 2.2 A copy of the Objection Notice is attached as Annex 02.

**3 RELEVANT LAW, GUIDANCE & POLICIES :**

3.1 The paragraphs below are extracted from either :

3.1.1 Licensing Act 2003 ('Act'); or

3.1.2 Guidance issued by the Secretary of State for Culture, Media and Sport of March 2010 ('Guid'); or

3.1.3 London Borough of Enfield's Licensing Policy Statement of January 2010 ('Pol').

**General Principles :**

3.2 The Licensing Sub-Committee must carry out its functions with a view to promoting the licensing objectives [Act s.4(1)].

3.3 The licensing objectives are :

3.3.1 the prevention of crime and disorder;

3.3.2 public safety;

3.3.3 the prevention of public nuisance; &

3.3.4 the protection of children from harm [Act s.4(2)].

3.4 In carrying out its functions, the Sub-Committee must also have regard to :

3.4.1 the Council's licensing policy statement; &

3.4.2 guidance issued by the Secretary of State [Act s.4(3)].

**Decision :**

3.5 Having heard all of the representations (from all parties) the Sub-Committee must, having regard to the Objection Notice, give the premises user a Counter Notice if it considers it necessary for the promotion of the crime prevention objective to do so [Act s.105].

**Background Papers :**

**None other than any identified within the report.**

**Contact Officer :**

**Mark Galvayne on 020 8379 4743**

W/L 211098956

Cash £21.00

LD/201100761

20468

**Temporary Event Notice**

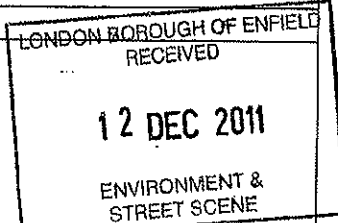
Information on the Licensing Act 2003 is available on the website of the Department for Culture, Media and Sport ([http://www.culture.gov.uk/alcohol\\_and\\_entertainment/default.htm](http://www.culture.gov.uk/alcohol_and_entertainment/default.htm)) or from your local licensing authority.

Before completing this notice please read the guidance notes at the end of the notice. If you are completing this notice by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written or typed in black ink. Use additional sheets if necessary.

You should keep a copy of the completed notice for your records. You must send two copies of this notice to the licensing authority and an additional copy must be sent to the chief officer of police for the area in which the premises are situated. The licensing authority will endorse one of the two copies and return it to you as an acknowledgement of receipt.

**I, the proposed premises user, hereby give notice under section 100 of the Licensing Act 2003 of my proposal to carry on a temporary activity at the premises described below.**

Enter personal details/premises			
<b>1. Your name</b>			
Title	Mr <input checked="" type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state)		
Surname	Kouttis		
Forenames	Phidias		
<b>2. Previous names (Please enter details of any previous names or maiden names, if applicable. Please continue on a separate sheet if necessary)</b>			
Title	Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state)		
Surname			
Forenames			
<b>3. Your date of birth</b>		Day12	Month1
			Year1948
<b>4. Your place of birth</b>		London	
<b>5. National Insurance Number</b>		YK 490 938B	
<b>6. Your current address (We will use this address to correspond with you unless you complete the separate correspondence box below)</b>			
235 Winchmore Hill Road, Winchmore Hill,			
Post town London		Post code N21 1QA	
<b>7. Other contact details</b>			
Telephone numbers Daytime	020 8882 5163		
Evening (optional)			
Mobile (optional)	07904238814		
Fax number (optional)			
E-Mail Address (optional)	simon@willowrestaurant.co.uk		
<b>8. Alternative address for correspondence (If you complete the details below, we</b>			



will use this address to correspond with you)	
Post town	Post code
9. Alternative contact details (if applicable)	
Telephone numbers: Daytime	
Evening (optional)	
Mobile (optional)	
Fax number (optional)	
E-Mail Address (optional)	

<p>Please give the address of the premises where you intend to carry on the licensable activities or if it has no address give a detailed description (including the Ordnance Survey references) (Please read note 2)</p>
<p>Willow, 235 Winchmore Hill Road, Winchmore Hill, London N21 1QA</p>
<p>If you intend to use only part of the premises at this address or intend to restrict the area to which this notice applies, please give a description and details below. (Please read note 3)</p>
<p> </p>
<p>Please describe the nature of the premises below. (Please read note 4)</p>
<p>It is a public house and restaurant</p>
<p>Please describe the nature of the event below. (Please read note 5)</p>
<p>Live Jazz night and Christmas party</p>

30. The licensable activities	
Please state the licensable activities that you intend to carry on at the premises (please mark an "X" next to the licensable activities you intend to carry on). (Please read note 6)	
The sale by retail of alcohol	<input checked="" type="checkbox"/>
The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club	<input checked="" type="checkbox"/>
The provision of regulated entertainment	<input checked="" type="checkbox"/>
The provision of late night refreshment	<input checked="" type="checkbox"/>
Please state the dates on which you intend to use these premises for licensable activities. (Please read note 7)	
26/12/2011, <del>27/12/2011</del>	
Please state the times during the event period that you propose to carry on licensable activities (please give times in 24 hour clock). (Please read note 8)	
23.00-03.00	
Please state the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers. (Please read note 9)	400
If the licensable activities will include the supply of alcohol, please state whether the supplies will be for consumption on or off the premises, or both (please mark an "X" next to the appropriate box). (Please read note 10)	On the premises only <input checked="" type="checkbox"/>
	Off the premises only <input type="checkbox"/>
	Both <input type="checkbox"/>

4. Personal Licence Holders (Please read note 10)		
Do you currently hold a valid personal licence? (Please mark an "X" in the box that applies to you)	Yes	No
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If "Yes" please provide the details of your personal licence below.		
Issuing licensing authority	Enfield Council	

Licence number	LN/200600667
Date of issue	
Date of expiry	19/12/2016
Any further relevant details	


5. Previous temporary event notices		
Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice? (Please mark an "X" in the box that applies to you)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If answering yes, please state the number of temporary event notices you have given for events in that same calendar year	11	
Have you already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? (Please mark an "X" in the box that applies to you)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

6. Associates and business colleagues		
Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? (Please mark an "X" in the box that applies to you)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If answering yes, please state the total number of temporary event notices your associate(s) have given for events in the same calendar year		
Has any associate of yours already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? (Please mark an "X" in the box that applies to you)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Has any person with whom you are in business carrying on licensable activities given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? (Please mark an "X" in the box that applies to you)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If answering yes, please state the total number of temporary event notices your business colleague(s) have given for events in the same calendar year.		
Has any person with whom you are in business carrying on licensable activities already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice? (Please mark an "X" in the box that applies to you)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>



7. Checklist (Please read carefully)	
I shall (Please mark the appropriate boxes with an 'X')	
Send two copies of this notice to the licensing authority for the area in which the premises are located	<input checked="" type="checkbox"/>
Send a copy of this notice to the chief officer of police for the area in which the premises are located	<input checked="" type="checkbox"/>
If the premises are situated in one or more licensing authority areas, send two copies of this notice to each additional licensing authority	<input checked="" type="checkbox"/>
If the premises are situated in one or more police areas, send a copy of this notice to each additional chief officer of police	<input checked="" type="checkbox"/>
Make or enclose payment of the fee for the application	<input checked="" type="checkbox"/>
Sign the declaration in Section 9 below	<input checked="" type="checkbox"/>

8. Condition (Please read carefully)
It is a condition of this temporary event notice that where the relevant licensable activities described in Section 3 above include the supply of alcohol that all such supplies are made by or under the authority of the premises user.

9. Declaration (Please read carefully)	
The information contained in this form is correct to the best of my knowledge and belief.	
I understand that it is an offence:	
(i) to knowingly or recklessly make a false statement in connection with this temporary event notice and that a person is liable on conviction for such an offence to a fine up to level 5 on the standard scale; and	
(ii) to permit an unauthorised licensable activity to be carried on at any place and that a person is liable on conviction for any such offence to a fine not exceeding £20,000, or to imprisonment for a term not exceeding six months, or to both.	
Signature	
Date	9/12/2011
Name of Person signing	Phidias Kouttis



Working together for a safer London

Metropolitan Police Licensing

**Objection - Temporary Event Notice**

Name and address of premises;

**Willow  
235 Winchmore Hill Road  
Winchmore Hill  
N21 1QA**

**WK/211098956**

I certify that I have considered the application and I have objections to make that the likely effect of the grant of this application will be detrimental to the licensing objectives relating to crime.

On Tuesday 13<sup>th</sup> December 2011, Police received copies of an application for a Temporary Event Notice for licensable activities to run at the above venue on Monday 26<sup>th</sup> December 2011 between 23:00 hours and 03:00 hours the following day.

The application includes the sale by retail of alcohol, the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club, the provision of regulated entertainment and the provision of late night refreshment.

Police are issuing this objection notice, objecting to the granting of the above temporary events on the grounds of crime.

**Current Situation.**

On Sunday 27<sup>th</sup> November 2011, following noise nuisance complaints, officers from Enfield Councils out of hour's noise nuisance team attended and witnessed a statutory noise nuisance emanating from Willow.

Both Mr Simis Kouttis and Mr Phidias Kouttis were spoken to by the officers and a request was made to turn the music down which was agreed. Both parties were informed that a statutory noise nuisance had been witnessed by them.

On Thursday 1<sup>st</sup> December 2011, a noise abatement notice was served on Mr. Phidias Kouttis and Mr. Simis Kouttis.

On Saturday 10<sup>th</sup> December 2011, a breach of that notice was witnessed by Enfield Councils out of hour's team. Officers then spoke to Mr Phidias Kouttis and pointed out

the offence. Mr Kouttis said that the neighbours had a vendetta against them and that they would be appealing the notice. Mr Kouttis told the officer that they had a TEN for the evening and that conditions didn't apply. The reporting officer informed him that it did not give him the right to play music at such high levels so as to cause a nuisance and was asked to turn the volume down which was subsequently done. A statement outlining the breach was completed by the witnessing officer.

Attached are the documents relating to the above incidents at Willow. These include a statement regarding the initial statutory noise nuisance, the noise abatement notice, the letter sent with the notice, a letter from Sue McDaid and a witness statement for the breach of notice.

#### The Application

The applicant/owner of the premises wishes to hold a Live Jazz/Christmas party on the day in question.

#### The Applicant

The application has been submitted by Mr Phidias Kouttis the premises licence holder of Willow.

#### In Summary

'Willow' is a public house and restaurant situated in a predominately residential area.

This application is for a maximum number of 400 people expected to attend on the evening.

This application for a TEN is one of a number submitted by the applicant in the run up to Christmas and the New Year.

The premise was recently reviewed by Enfield's Trading Standards regarding noise nuisance issues.

As a result, the hours for licensable activity were reduced by one hour on Fridays and Saturdays to 23:00 hours. The matter went to appeal at Enfield Magistrates Court and the original decision was upheld. (Please see Annex A for a copy of the decision notice)

Despite this ruling, a series of TEN applications were submitted. After discussion with the applicant regarding noise issues, the applicant stated that it wouldn't be a problem as any music played would be of a background nature only. As a result of these promises, the applications were granted.

Subsequently, a statutory noise nuisance offence was witnessed at Willow, an abatement order issued and a further breach also witnessed. This is contrary to Section 80 of the Environmental Act 1990.

I believe that the owners of Willow have failed to show that they can hold these events without breaching Sec 80 of the Environmental Protection Act 1990 and feel strongly that should this application be granted, a further breach is likely to occur to the detriment of those residents living nearby.

Police believe that the licensing objective in relation to crime has been undermined and have no confidence in the application or applicant.

Therefore, Police object in the strongest terms to the granting of this temporary event notice.

Officer: Martyn Fisher PC 357YE

Date: 13<sup>th</sup> December 2011

## **Annex A**

### **Phidias and Simon Kouttis -v- The London Borough of Enfield**

#### **Appeal**

This is an appeal by the licensees of the Willow Public House against a decision dated 8th September 2010 of the Licensing Sub-Committee of The London Borough of Enfield on an application for review of the premises licence under the Licensing Act 2003.

#### **Review Hearing**

The Council were and are concerned about noise breakout so that music from the premises can be heard some way away late at night and about noise made by customers leaving the premises especially at closing time on Friday and Saturday nights between about midnight and 12.30am.

The Council's Trading Standards Department sought to have removed from the licence the playing of live and recorded music and to have the hours for the carrying on of licensable activities reduced by one hour on Fridays and Saturdays so that those hours ended at 23.00. In the event the Sub-Committee found both matters of complaint made out. In respect of noise breakout the Sub-Committee replaced the licence conditions with a new package of agreed conditions aimed, amongst other things, at managing the noise breakout issue. In respect of dispersal issue the Sub-Committee reduced the hours by one hour on Friday and Saturday. This appeal is limited to that one narrow issue.

A consequence of the appellants giving notice of appeal is that they have been able to trade under the old hours and conditions pending this appeal hearing.

### **Burden of proof**

It is common ground that the appellants have the burden of proving that the decision of the Council was wrong.

### **Real issue**

The real issue in this appeal is whether the Sub-Committee was wrong to reduce the hours for licensable activities on Friday and Saturday nights in response to perceived noise and disturbance caused by customers leaving the premises at and around closing time. The appellants make no complaint about the agreed package of conditions attached to the licence at the review hearing, nor have alleged breaches of licence conditions formed a focus of this appeal hearing although it is clear that the Council are still investigating these. The original notice of appeal included some criticism of the Sub-Committee's decision making process but those arguments have not been advanced at this hearing.

### **Appellants' case**

The premises have been used as a public house for a number of years. Before the appellants took over the premises in 2007 the pub had acquired a bad reputation. The appellants have invested considerable time and money in changing the character of the premises. For the first few months they effectively carried on running the pub without making major changes. Then they closed the premises for most of 2008 for major refurbishment in which they invested in the region of £1 million. They reopened the premises as a restaurant upstairs and a bar/function suite downstairs. The aim, which they have achieved, was to take the venue up market and attract a clientele of over 25 year olds.

They acknowledge that they were perhaps naive initially about the size and complexity of the enterprise they were taking on. Nevertheless they have worked tirelessly to achieve their objective and in doing so have co-operated with the Council and local residents. A number of residents have expressed their appreciation for the appellant's efforts and consider the venue now to be an asset to the local community. Two such people, Mr John Parnell of 8 Meadowbank, Eversley Park Road and Mr Antoin Hanley of 25 Meadowbank, Eversley Park Road gave evidence before me to the effect that they have encountered no problems from the premises since they reopened. I have no reason to doubt what they said. They were not regular customers. Mr Parnell's bedroom overlooks the Willow's car park and he takes his dog for a walk past the Willow every night after 11pm.

Mr Gosling gave evidence as to the measures taken to contain noise breakout from music. I shall not go into his evidence in detail since it is not controversial in the context of the appeal save to demonstrate that Mr Kouttis is able to engage constructively with the Council to address issues arising from his use of the premises.

Mr Simon Kouttis gave evidence at length. When he became aware of the dispersal problems 2 years ago he drew up a document comprising objectives for doormen and took up a very active role in training and supporting the SIA registered doormen employed at the premises. On some dates, for example 13.5.2011 those in the premises after closing time have been his friends and family. On one recent occasion it proved impossible to get a rowdy 30th birthday party to leave quietly despite taking measures such as ordering taxis for them in advance.

In addition to that, with regard to noise breakout, he and his father engaged the services of a firm of noise consultants called 24 Acoustics who produced a report containing recommendations which have now been adopted at a cost to the business of at least £20-30K. The works undertaken have included noise limiting technology fitted to the house amplification system and sound insulation works.

Mr Kouttis appeared unsure about some of the conditions of his licence. For example, in cross-examination he said that the restaurant served food until midnight, a position he later resiled from when it was explained that the provision of late night refreshment, ie after 11pm was not permitted.

It was obvious that Mr Kouttis cared passionately about the business and there is little doubt in my mind that contributed significantly to the way he answered questions put to him, becoming indignant and argumentative in the face of criticism. He also had a tendency to answer the question he wanted to rather than the one put.

### **Respondent's case**

Stated simply, the respondent's case is that since the review hearing before the Sub-Committee, the premises have continued to generate problems on Friday and Saturday nights when noise breakout and dispersal issues have been observed and complaints made to the Council. The respondents say that with this appeal hearing pending it has afforded the appellants the opportunity to demonstrate that they can address the Council's concerns. The appellants' inability to do this has shown that the Sub-Committee's decision was not wrong at the time and is not wrong now.

The respondents called a number of witnesses, both local residents and council officers who gave evidence as to the nuisance caused by customers dispersing from the premises.

2 local residents, Wallace Clayman and Kenneth Stanton both of Ashwood Lodge gave evidence of general disturbance they had been subjected to which had not abated in the last year save perhaps in the last month when the weather had been cooler.

Angela Allin, a licensing enforcement officer, gave evidence of observations outside the Willow on 13.5.11 when music from the premises was clearly audible until 00.09. At 00.19 about 20 people were laughing screaming and talking in the car park. There was no evidence of anyone trying to quieten them or move them on. Other noisy people left and at 00.33 hours a man physically hit a bus shelter. He was carrying a female and they were talking and laughing loudly with another male.

Tom Howorth was also present on 13.5.11 and observed similar things. He made other observations including on 15.7.11 when from a flat belonging to Mrs Woods customers were seen to leave the Willow laughing, shouting and screaming, without any intervention from door supervisors, all of which was clearly audible with the window shut.

Mrs Areti Woods gave evidence that supported Mr Howorth's evidence of occurrences on 15.7.11. She stated that what happened on 3.9.11 was not an unusual experience at the weekend, in fact rather the reverse, it was fairly typical.

Charles Le Besque, principal environmental health officer gave evidence that he carried out a visit on 3.9.11 when there was a substantial disturbance lasting from midnight to around 1 am. This included shouting, laughter, noisy vehicles, vehicle horns sounding and, at one stage a female who had come out of the premises removing her clothes and urinating in the street.

Other local residents gave evidence of the disturbances they had been subjected to.

## **Law**

It is now settled law that in deciding this appeal the test that I must apply is whether the decision of the Sub-Committee was wrong. I have heard evidence in the course of the hearing some of which has related to events that have occurred in the 12 months since the review hearing. It is right that I am entitled to take that evidence into account on deciding whether the Sub-Committee got it wrong. I have the benefit of hindsight therefore. However, it is not enough that I might have come to a different conclusion on the evidence before me, the appellants must satisfy me that the decision was wrong.

It is important to look at how the Sub-Committee was required to carry out its task. Section 4 of the Licensing Act 2003 requires the licensing authority to promote the licensing objectives which are:

- (a) the prevention of crime and disorder
- (b) public safety
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

In carrying out its functions the licensing authority is also required to have regard to its licensing statement and any guidance issued by the secretary of state under section 182 of the 2003 Act.

Guidance issued under the Licensing Act makes it clear that each of the objectives are of equal importance. There are no other licensing objectives. The LBE licensing policy at para 8.4 states that stricter conditions with regard to licensing hours may be required for licensed premises situated in or immediately adjacent to residential areas to ensure that disturbance to local residents is avoided.

In carrying out this review and coming to its decision the Sub-Committee has purported to promote the public nuisance objective.

The Hope and Glory case approves the following approach:

- (a) Note the decision of the sub-committee
- (b) Not lightly reverse their decision
- (c) Only reverse their decision if satisfied it was wrong
- (d) Hear evidence
- (e) Conclude that the correct approach is to consider the the promotion of the licensing objectives, to look at the Licensing Act 2003, the Guidance made under s182, the licensing authority Statement of Licensing policy and any legal authorities.
- (f) Not to be concerned with the way in which the Licensing Sub-Committee approached their decision or the process by which it was made.

The range of powers available to me is to:

- (a) Dismiss the appeal
- (b) Substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
- (c) Remit the case to the licensing authority to dispose of it in accordance with the directions of the court.

### **Submissions**

**The respondents say** that customers leaving the premises are causing disturbance in the locality. It is exactly that kind of low level nuisance referred to by Burton, J in the Hope and Glory case. It is incurable in the sense that the



licensee was aware of it before the review hearing a year ago and it still persists. There are no proposals as to how it might be tackled. The local authority have a statutory duty to prevent or limit it. Prevention of public nuisance is one of the 4 licensing objectives.

The local authority have shown it is prepared to intervene at the lowest level available to it in that noise breakout has been dealt with by a combination of the appellant's noise experts proposals and attaching new conditions to the licence.

Up to date evidence has confirmed that the local authority was right to take action in that the problems have not been contained and it is clear that the licensees cannot do so. The local authorities licensing policy and guidance issued by the secretary of state are consistent with the action taken. The appellant must satisfy the court that the decision is wrong which is not a decision to be taken lightly. The fact that the nuisance is ongoing and no other solution has been offered make it difficult to say the decision was wrong. There are no other points of law relevant to the decision.

**It is submitted on behalf of the appellants** that dispersal and noise breakout amount at most to a private and not a public nuisance. There are many local residents who have not been affected and indeed a number who support the appeal. In terms of letters written and statements made there are as many people support the appellants as there are who support the respondents.

The decision taken a year ago was mainly on the basis of noise breakout, a problem that the licensees have addressed with some measure of success. It is only now that the appellant fully realises that the concerns are now limited to dispersal that they have the opportunity to address those concerns. Simply taking an arbitrary decision to reduce the premises hours by one on Friday and Saturday will only serve to cause similar issues an hour earlier. By widening the window of dispersal by a more managed and phased closure of the premises the issues can be addressed at cause. That would be a proportionate response.

### **Conclusions**

I recognise that the appellants have invested a lot of time and money in improving the premises and changing the character of the venue and its clientele, however there is ample evidence of disturbance to local residents from people leaving the premises between midnight and 00.30 on Fridays and Saturdays. There was evidence that was the case in September 2010 at the time of the review hearing and there is evidence both from council officials and local residents that this continues up to the present time. There is a high degree of concordance between the evidence of the council officers and that of local residents who support the respondent. The appellants have not either sought to or been able to challenge the majority of that evidence.

The local authority brought the review proceedings to promote the public nuisance licensing objective. Burton J in the Hope and Glory case held that low level nuisance perhaps affecting a few people living locally was capable of constituting public nuisance. Local residents have had their sleep disturbed by people in high spirits leaving the Willow shouting, screaming, laughing, revving car engines and tooting car horns, not on every Friday and Saturday night but on many of them. This I find to be public nuisance. Mr Kouffis has been aware of the issues and instituted a set of objectives for door supervisors to try and tackle the issues. That, by his own admission, has failed to abate the problem.

\*\*\*The local authority has a positive duty to intervene to promote the prevention of public nuisance. Intervention was both in accordance with guidance issued under the Licensing Act and the authorities own licensing policy which provides that stricter conditions with regard to licensing hours may be needed for premises in residential areas.

The local authority has demonstrated itself to have taken a proportionate response in that the noise escape issues have been dealt with by an agreed package of conditions and works to the premises short of removing musical entertainment from the licensable activities. There have, until closing submissions were made this afternoon, been no suggestions of any less interventionist ways of dealing with the dispersal issues. These issues existed at the time of the review hearing and have not abated. It may be that limiting the hours will not abate the problems completely, (although equally some of the clientele may not have had as much to drink at an earlier hour) but it will bring dispersal problems forward to a time before many residents have retired to bed. Residents have for a long time been used to having a public house in the area, but not a late night entertainment venue.

Accordingly I am unable to say that the licensing authority were wrong, indeed, whilst I am not required to go this far, it seems to me on the evidence I have heard that they were right. Consequently the appeal must be dismissed.

## Statement of witness

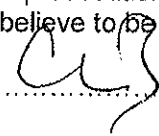
*(Criminal Procedure Rules, r 27.1(1);  
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)*

**STATEMENT OF:** Charles Le Besque


**Age of witness (if over 18 enter "over 18"):** Over 18

**Occupation of witness:** Principal Environmental Health Officer

This statement (consisting of 3 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed  Dated the 13<sup>th</sup> December 2011

My name is Charles Le Besque and I am employed by the London Borough of Enfield as a Principal Environmental Health Officer. I hold the BSc (Hons) Degree in Environmental Health accredited by the Chartered Institute of Environmental Health, the Institute of Acoustics Diploma in Acoustics and Noise Control and I hold the BIIAB Level 2 National Certificate for Licensing Practitioners. I am a Full Member of the Chartered Institute of Environmental Health. I have been working within Environmental Health Teams in Local Authorities for fifteen years. I am an authorised officer under the Licensing Act 2003 and the Environmental Protection Act 1990. On 26<sup>th</sup> November 2011 I was working on the Councils Out of Hours Noise Team with Joynul Islam, Environmental Protection Officer. I received three complaints made by local residents about the Willow, 235 Winchmore Hill Road, London, N21. These were received from our telephone operator Vangent via my telephone at 00:26 hours, 00:40 hours and 00:50 hours on 27/11/11. All related to loud music playing at the Willow and concerns about the late hours the premises was operating. At 00:38 hours I attended outside the Willow with Mr Islam, parking outside number 248 Winchmore Hill Road. Loud bass beat music was clearly audible coming from the Willow venue. The premises appeared to be open and trading, with lights on and

Signature 

F H02/01

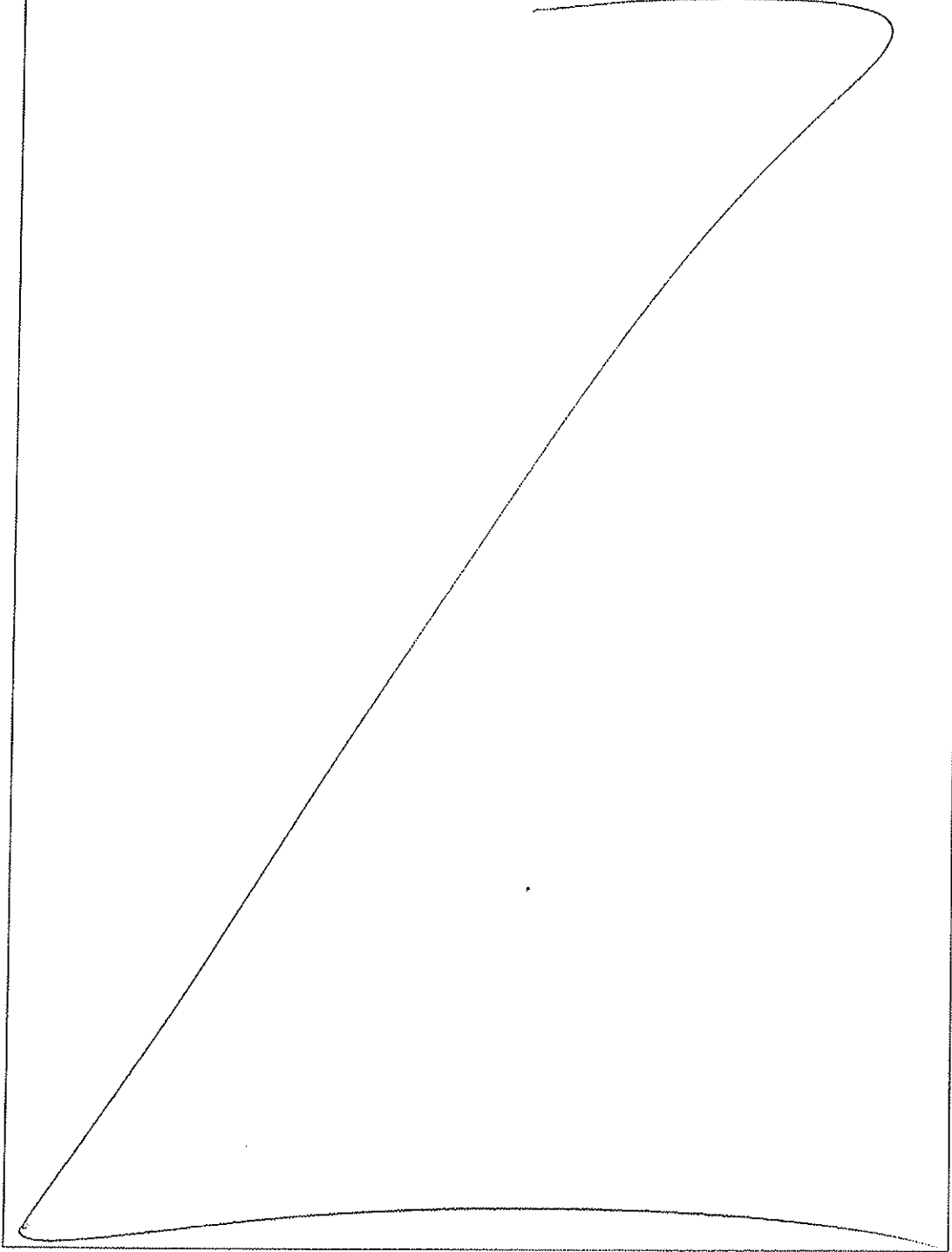
customers inside, and customers were seen to be leaving via the external stairs from the first floor of the venue. At approximately 00:50 hours I attended one of the complainants property, which is located on the opposite side of the road to the Willow, on Winchmore Hill Road. I entered the complainants property and made an assessment of the noise from the first floor front bedroom. Music was clearly audible with the double glazed windows open and also with them closed. When closed the bass was just as loud as when open. This would have made normal use of this room at this time of night difficult. I considered the music levels to be loud enough to amount to a statutory nuisance.

I left the complainants address at 01:10 hours and visited the Willow entrance. I met a male door supervisor who advised the premises was open until 03:00 hours this morning, and he was letting customers in / out of the venue. I could see the venue was open and trading and many customers were inside. Music was definitely coming from this premises and it was a DJ as opposed to live music. I requested to speak with the manager who he agreed to go inside and get for me. Mr Simis Kouttis and Mr Phidias Kouttis came to the door, and I asked them both to come outside with me so we could talk. I advised I had received three noise complaints this evening and that the music levels were too loud. I took them both up the road to stand outside 248 Winchmore Hill Road to demonstrate the levels of noise. With no road traffic passing along the road the music was clearly audible. I requested the music levels were reduced now which they agreed to do so. They advised they had a DJ on tonight and that they were open late as they had a Temporary Event Notice. I advised that I had witnessed a statutory nuisance tonight. I left the location at 01:25 hours.

On 1<sup>st</sup> December 2011 Mr Ned Johnson, Principal Officer, prepared two noise abatement notices. I delivered these two noise abatement notices by hand addressed to Mr Simis Kouttis and Mr Phidias Kouttis at their home address as stated on the Premises Licence for the Willow at 83 Bush Hill Road, London, N21

Signature.....

2DG on 1<sup>st</sup> December 2011 at 16:15 hours. I exhibit the Abatement Notice served on Mr Simis Kouttis as CLB 1 and the covering letter as CLB2. I exhibit the Abatement Notice served on Mr Phidias Kouttis as CLB 3 and the covering letter as CLB4. Certificate of service by hand of these Notices are exhibited as CLB 5 for Mr Simis Kouttis and CLB 6 for Mr Phidias Kouttis.



Signature *CLB*

**LONDON BOROUGH OF ENFIELD**

**REF NO WK/211094574**

**ENVIRONMENTAL PROTECTION ACT 1990 – SECTION 80**

**ABATEMENT NOTICE IN RESPECT OF STATUTORY NUISANCE**

To: **Mr. Phidias Kouttis**  
of: **83 Bush Hill Road**  
**London**  
**N21 2DG**

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the Council of the London Borough of Enfield, being satisfied of the occurrence of a noise amounting to a nuisance under section 79 (1) (g) of the above Act at **Willow, Public House, 235 Winchmore Hill Road, London, N21 1QA**, within the district of the said Council arising from:

**The production of noisy music**

HEREBY REQUIRE YOU as the person responsible for the said nuisance of the premises, **Willow, Public House, 235 Winchmore Hill Road, London, N21 1QA** from which the noise is or would be emitted **forthwith** from the service of this notice, to abate the same, and also HEREBY PROHIBIT the recurrence of the same and for that purpose require you to:

**Exercise proper control of the volume of sound generated at the premises so as to ensure that the total volume of sound emitted is not likely to cause a nuisance to persons residing in the vicinity.**

IN the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council,

the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

/contd

REF NO WK/211094574

IF YOU CONTRAVENE without reasonable excuse any requirement of this notice you will be guilty of an offence under section 80 (4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the Standard Scale\*, together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable, on summary conviction, to a fine not exceeding £20,000. The Council may take proceedings for securing the abatement, prohibition or restriction of the nuisance.

Signed *Charles LeBesque*

**Charles LeBesque**  
Principal Officer

Dated 1/12/11

\*Currently £5000, subject to alteration by Order.

"Note - The person served with this notice may appeal against the notice to a magistrates' court within the period of twenty-one days beginning with the date on which they were served with the notice."

**NB See attached explanatory notes N6B**

---

Address for all communications:  
London Borough of Enfield  
Planning & Environmental Protection  
PO Box 57, Civic Centre, Silver Street, Enfield, EN1 3XH

Contact: **Charles LeBesque**

Telephone: **020 8379 3688**

LONDON BOROUGH OF ENFIELD

REF NO WK/211094480

ENVIRONMENTAL PROTECTION ACT 1990 – SECTION 80

ABATEMENT NOTICE IN RESPECT OF STATUTORY NUISANCE

To: **Mr. Simis Kouttis**  
of: **83 Bush Hill Road**  
**London**  
**N21 2DG**

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the Council of the London Borough of Enfield, being satisfied of the occurrence of a noise amounting to a nuisance under section 79 (1) (g) of the above Act at **Willow, Public House, 235 Winchmore Hill Road, London, N21 1QA**, within the district of the said Council arising from:

**The production of noisy music**

HEREBY REQUIRE YOU as the person responsible for the said nuisance of the premises, **Willow, Public House, 235 Winchmore Hill Road, London, N21 1QA** from which the noise is or would be emitted **forthwith** from the service of this notice, to abate the same, and also HEREBY PROHIBIT the recurrence of the same and for that purpose require you to:

**Exercise proper control of the volume of sound generated at the premises so as to ensure that the total volume of sound emitted is not likely to cause a nuisance to persons residing in the vicinity.**

IN the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council,

the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

/contd



REF NO WK/211094480

IF YOU CONTRAVENE without reasonable excuse any requirement of this notice you will be guilty of an offence under section 80 (4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the Standard Scale\*, together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable, on summary conviction, to a fine not exceeding £20,000. The Council may take proceedings for securing the abatement, prohibition or restriction of the nuisance.

Signed



**Charles LeBesque**  
Principal Officer

Dated 1/12/11

\*Currently £5000, subject to alteration by Order.

"Note - The person served with this notice may appeal against the notice to a magistrates' court within the period of twenty-one days beginning with the date on which they were served with the notice."

**NB See attached explanatory notes N6B**

---

Address for all communications:  
London Borough of Enfield  
Planning & Environmental Protection  
PO Box 57, Civic Centre, Silver Street, Enfield, EN1 3XH

Contact: **Charles LeBesque**

Telephone: **020 8379 3688**



**Mr Phidias Kouttis &  
Mr Simis Kouttis  
Willow  
235 Winchmore Hill Road  
London  
N21 1QA**

Please reply to: Sue McDaid  
Environmental Protection and  
Regulation  
PO Box 57, Civic Centre  
Silver Street, Enfield, Middx. EN1 3XH  
Tel: 020 8379 2680  
Fax: 020 8379 8506  
Minicom: 020 8379 4419  
Email: [Trading\\_standards@enfield.gov.uk](mailto:Trading_standards@enfield.gov.uk)  
My Ref: WK/211054052  
Your Ref: LN/200800171  
Date: 1 December 2011

Dear Mr P Kouttis and Mr S Kouttis,

**Environmental Protection Act 1990 – Section 80  
Licensing Act 2003  
Willow, 235 Winchmore Hill Road, London, N21 1QA**

As you will be aware, we had been investigating alleged offences under the Licensing Act 2003 in relation to your premises. The investigation highlighted that there is sufficient evidence of several licence conditions which have been breached since May 2011. However, given the outcome of the recent licence review appeal hearing and taking into consideration that many of the conditions have now been amended, we have decided not to pursue formal action.

We are also keen to move forward following the licence review appeal to rebuild the relationship between us, and wish to continue to support you in ensuring your premises operates both successfully and in compliance with the modified licensable hours and conditions for the future.

As you will be aware, Officers from our Noise Out of Hours Service received complaints about loud music emanating from your premises in the early hours of Sunday 27 November 2011 during the operation of a Temporary Event Notice (TEN). The officers visited and established that the noise constituted a statutory noise nuisance. They subsequently spoke to yourselves at the premises to explain that the music noise was too loud and was a statutory nuisance.

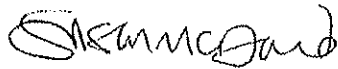
As you will be aware, noise abatement notices were served on you in 2007 to control the volume of noise. Following the witnessing of the noise nuisance on Sunday morning, we are serving a new noise abatement notice on each of you, which is enclosed. The notice requires you to control the volume of noise so that it does not cause a nuisance.

It appears that the DJ's music equipment on Saturday 26th/Sunday 27<sup>th</sup> November was not connected to the noise limiter to control the level. Whilst you are not required under the Licensing Act 2003 to comply with your premises licence conditions during TENS; such as the use of the noise limiter, I strongly urge you to do so in order to assure yourselves that you do not cause nuisance. If noise which amounts to a nuisance is witnessed after the service of this notice, you will be liable to prosecution or a fixed penalty notice for breach of the notice. If the noise problems persist, we will have to consider a review of the premises licence or closure powers. I very much hope that the noise issue witnessed last weekend does not re-occur and that there is no need for us to consider any further formal action.

I realise that the licence appeal review and the magistrates court's decision has been a very difficult time for the business and yourselves, and I am keen that we rebuild the relationship between us. I am sure that you appreciate that should further complaints be received during office hours or out of hours, there is likely to be a need to investigate them and to contact you.

I am happy to meet with you to discuss the noise nuisance issue, so please contact me if you would find this useful.

Yours sincerely,



**Sue McDaid**

**Head of Regulatory Services**

*cc. Mr Phidias Kouttis, 83 Bush Hill Road, London, N21*

*cc. Mr Simis Kouttis, 83 Bush Hill Road, London, N21 2DG.*



Mr Simis Kouttis  
83 Bush Hill Road  
London  
N21 2DG

Please  
reply to:

Charles LeBesque

Tel:  
Fax:  
Minicom:  
My Ref:  
Date:

Planning & Environmental Protection  
PO Box 57, Civic Centre  
Silver Street, Enfield, Mddx. EN1 3XH  
020 8379 3688  
030 8379 5120  
020 8379 4419  
WK/211094480  
1st December 2011

Dear Mr Kouttis

**Re: Environmental Protection Act 1990 Section 80**  
**Premises: Willow, Public House, 235 Winchmore Hill Road, London, N21**  
**1QA**

I have enclosed the above notice for the abatement of any production of music at Willow, Public House, 235 Winchmore Hill Road, London, N21 1QA

From the service of this notice you are required to abate the said nuisance forthwith. Failure to comply with this notice will result in the Council taking further legal action.

If you wish to appeal against this notice you have 21 days to do so and will need to report to:

Enfield Magistrates Court  
The Court House  
Lordship Lane  
Tottenham London  
N17 6RT.

Should you wish to discuss the matter further, please do not hesitate to contact me on the number given above

Yours sincerely

A handwritten signature in black ink that reads "Charles LeBesque".

Charles LeBesque  
Principal Officer



Mr Phidias Kouttis  
83 Bush Hill Road  
London  
N21 2DG

Please  
reply to:

Charles LeBesque

Planning & Environmental Protection  
PO Box 57, Civic Centre  
Silver Street, Enfield, Mddx. EN1 3XH

Tel: 020 8379 3688  
Fax: 030 8379 5120  
Minicom: 020 8379 4419  
My Ref: WK/211094574  
Date: 1st December 2011

Dear Mr Kouttis

**Re: Environmental Protection Act 1990 Section 80**  
**Premises: Willow, Public House, 235 Winchmore Hill Road, London, N21**  
**1QA**

I have enclosed the above notice for the abatement of any production of music at Willow, Public House, 235 Winchmore Hill Road, London, N21 1QA

From the service of this notice you are required to abate the said nuisance forthwith. Failure to comply with this notice will result in the Council taking further legal action.

If you wish to appeal against this notice you have 21 days to do so and will need to report to:

Enfield Magistrates Court  
The Court House  
Lordship Lane  
Tottenham London  
N17 6RT.

Should you wish to discuss the matter further, please do not hesitate to contact me on the number given above

Yours sincerely

A handwritten signature in cursive script that reads "Charles LeBesque".

Charles LeBesque  
Principal Officer

**Statement of witness**


*(Criminal Procedure Rules, r 27.1(1);  
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)*

**STATEMENT OF:** Martin Rattigan

**Age of witness (if over 18 enter "over 18"):** Over 18

**Occupation of witness:** Team Leader Environmental Protection and Safety

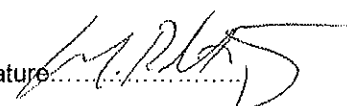
This statement (consisting of 4 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything, which I know to be false or do not believe to be true.

Signed...  .....

Dated the 13<sup>th</sup> Dec 2011

I am Martin Rattigan, Public Health Project Manager, employed by the London Borough of Enfield since September 2003. I have an honours degree in Environmental Science and Technology, Degree in Environmental Health and two post graduate Diplomas, in Acoustics and Noise control and Health and Safety at Work. I am an authorised officer for the purposes of nuisance investigations, under primary legislation in the Environmental Health realm. I have participated in the Out of Hours Noise service for over five years.

On the Friday 9<sup>th</sup> December 2011, I was working on the Out of Hours noise service with my colleague, Mr David Dollemore. The out of hour's noise service is a reactive service, which responds to complaints about noise nuisance. The

Signature  .....

service operates from 21:00 to 03:00 am the next day and is available Friday and Saturday nights. At approximately 01:22 on Saturday morning the 10<sup>th</sup> December 2011 we received a phone call from a local resident while parked on Eversley Park Rd and the corner of Meadowbank. We had driven to the location following a complaint from another resident whom we could not reach by phone. Prior to the call from the second resident I had noted that the music from the Willow was very loud as I had walked along Winchmore Hill Rd and stood outside No.240 (approximately 100m away) at which location the music was clearly audible. Likewise standing on the corner of Meadowbank and Eversley Park Rd the music was clearly audible. I noted that the premise was open and trading with a DJ located at the conservatory end of the premises. As I walked by I noted that the level of music was louder at the corner of Eversley Park Road. The premises appeared full with two women standing outside smoking.

At approximately 01:26 we entered the residents' premises and we were initially shown into the front living room. The music was clearly audible in the room and I could feel the vibration from the bass through my feet. The sound track was clearly identifiable as Bob Marley. At 01:28 we went up to the bedroom (the bedroom normally used by the resident) that being the first floor front bedroom. His partner was awake due to the noise. From my observations in the bedroom I noted that the music was very loud but I was unable to identify the sound tracks as they were songs unfamiliar to me. The level of music remained constant only broken by the introductions by the DJ.

At approximately 01:34 I returned to the downstairs rooms where the residents were now sitting. I observed that the music was of Garage type with

Signature



a heavy bass. I could hear the DJ and then I heard the words to the song 'Move like Jagger'. At 01:38 the music was still clearly audible through out the house as I moved from room to room. At 01:40 a new track which I recognised as from the artist Bobby Brown, 'Two can play that game' was clearly audible, which due to the strong bass content and level of music I could feel the vibration under my feet.

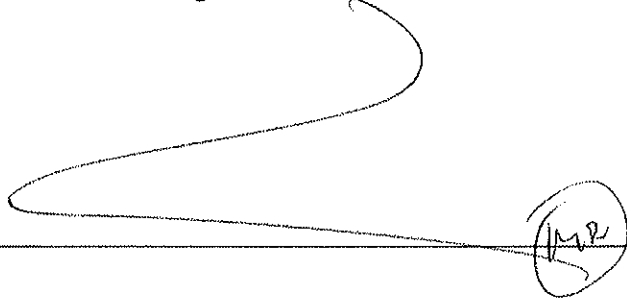
Due to the elevated level of music, the time of the night and the fact that the occupants were unable to sleep due to the elevated level of music being experienced in their property, I would consider that this was unreasonable and amounted to a statutory nuisance. As we left the property the resident's partner mentioned that she was going to bed and would use earplugs to try getting some sleep.

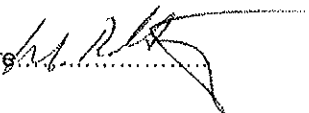
At approx. 01:44 we went to the Willow Pub and I spoke to the door supervisor. I requested that he asked the DPS or owner to come out to speak to us. I mentioned to the door supervisor that the level of music was very loud even where we were standing outside the doors; he replied that it was a new DJ tonight. Then a young female came out and asked what we wanted? I asked for the DPS and she returned to the premises and a gentleman who identified himself as Mr Phidias Kouttis came to speak to us.

I informed Mr Kouttis that the level of music was very loud and I had witnessed nuisance in a nearby residential property. I informed Mr Kouttis that this was a breach of the noise abatement notice served last week and he would be reported for the breach. Mr Kouttis replied that it was a special event, a party, that all this was silly (gesturing across the road to the houses opposite on Winchmore Hill Rd), "these people have a vendetta against us".



He continued to say that he was appealing the notice. When I mentioned that the level was excessive, Mr Kouttis replied he had a Temporary Events Notice and the conditions did not apply. I told him this does not allow him to play music at a level to cause nuisance to residents and requested he lower the volume and reduced the bass content. Mr Kouttis then said he would ask the DJ to turn it down and he turned away and walked back into the premises. At 02:10 I walked around the vicinity of the premises again and noted that the level had been reduced considerably. At this stage there were two taxis outside and customers were starting to leave.

A large, stylized handwritten signature or scribble that starts with a long horizontal line, loops upwards and back down, and ends with a circular mark containing the initials 'MR'.

Signature 

This page is intentionally left blank