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LICENSING SUB-COMMITTEE - 29.3.2023

MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE HELD ON WEDNESDAY, 29 MARCH 2023

COUNCILLORS

PRESENT (Chair) George Savva MBE (Cabinet Member for Social Housing), Paul Pratt and Doug Taylor

ABSENT Sabri Ozaydin

OFFICERS: Ellie Green (Principal Licensing Officer), Charlotte Palmer (Senior Licensing Enforcement Officer) Dina Boodhun (Legal Adviser) and Metin Halil (Democratic Services)

Also Attending:

1 WELCOME AND APOLOGIES FOR ABSENCE

Councillor Savva as Chair welcomed all attendees to the meeting and explained the order of the meeting.

Councillor Savva also apologised for the delay to the start of the meeting which convened at 10:30am.

2 DECLARATION OF INTERESTS

NOTED there were no declarations of interest in respect of the items on the agenda.

3 MINUTES OF PREVIOUS MEETING

AGREED the minutes of the meetings held on Wednesday 22 February 2023 as a correct record.

4 SKEWD KITCHEN, 113-115 COCKFOSTERS, ROAD, BARNET, EN4 0DA

Received the application made by Enfield Council's Licensing Authority for a review of the Premises Licence (LN/202100333) held by Mr Mazlum Demir at the premises known as and situated at Skewd Kitchen, 113-115 Cockfosters Road, Barnet, EN4 0DA.

NOTED

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1. The introduction by Ellie Green, Principal Licensing Officer, including:
 - a. The application was for a review of the premises licence for premises known as Skewd Kitchen, 113-115 Cockfosters Road, Barnet, EN4 0DA.
 - b. Mr Mazlum Demir is both the Premises Licence Holder (PLH) and the Designated Premises Supervisor (DPS). The licence application was granted/issued by officers on the 8 November 2021 and has only been used as a licence since October 2022 as that is when the premises is thought to have opened.
 - c. The review hearing was submitted by the Licensing Enforcement Team on behalf of the Licensing Authority, and they seek to amend conditions of the premises licence in order to support the prevention of public nuisance licensing objective.

This is in response to a number of complaints that the PLH has been unable to control from the noise and music, namely a DJ and statutory noise nuisances have been witnessed.
 - d. Local residents have reported that they have been greatly affected by the loud music throughout the week since the premises opened.
 - e. There are various conditions which are sought by the Licensing Authority and since been offered by the PLH. But it appears that no final position has been agreed. So, the conditions that are up for discussion at this hearing are presented in Appendix F (from page 165) and it is those new conditions that are not agreed between the parties that require the LSC to make a decision on. These are detailed from Annex 3 & Appendix F (from page 165) of the bundle.
 - f. There are no changes being sought to the licensable hours or activities on the current licence. So, the full review application can be seen at Appendix A (Pages 19), Appendix E (Page 159) & Appendix I (Page 193) of the report.
 - g. The review attracted representations supporting the review application from the Council's Commercial Noise Team and from 5 local residents who all live in Braemore Court, which are the residential flats above the commercial parade and above the commercial premises. Those representations are detailed at Appendices C, G & H from pages 95 -171 of the report including the Supplementary report.
 - h. The PLH did respond to the review and has submitted a written representation including a noise acoustic report detailed at Appendix D from page 113 of the report.
 - i. The existing premises licence does not specify any music as a licensable activity, however due to regulatory changes and later amendments to the Licensing Act 2003, live & recorded music can be provided to an audience of no more than 500 at any one time at any premises licensed for on sales of alcohol between the hours of 08:00am and 11:00pm without being required to be a licensable activity on the licence. Since the deregulation, those conditions relating to music control are suspended between the hours of

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08:00am and 11:00pm and only become effective if the licence permits the live or recorded music after 11:00pm.

- j. Section 177A of the Licensing Act, there is a provision to dis-apply this entitlement to provide live and recorded music by adding a condition to that effect through a review process.
 - k. The purpose of this review is to modify the conditions of the licence by adding a condition which removes the right to play any music other than background level.
2. The statement of Charlotte Palmer, Senior Licensing Enforcement Officer, on behalf of the Licensing Authority:
- a. The Licensing Authority had submitted this review on the grounds of the prevention of public nuisance licensing objective.
 - b. Music has been provided at such a level as to be deemed a statutory nuisance with an abatement notice served. This notice has subsequently been breached despite the premises being aware that noise complaints were being received.
 - c. There are residential properties directly above this parade of shops and speakers are attached to the restaurant ceiling.
 - d. When the application for a premises licence was submitted the applicant did not apply for any regulated entertainment therefore no noise control conditions were offered or requested.
 - e. It is believed that this business started trading from this address approximately 20th October 2022 and between that date and 10 December 2022, 18 noise complaints were received coming from 8 different residential addresses. Officers advised the premises of the complaints in writing on at least 5 occasions and in person at least 5 times.
 - f. Unauthorised regulated entertainment has been witnessed by officers on 2 occasions and loud music has been witnessed by officers on three occasions. This included 4th November 2022, the very same day that very clear advice had been given over the phone and in a follow up e-mail by officers. The e-mail is detailed at Annex 3 (page 51-53) of the report.
 - g. A noise abatement notice was served on 10th November 2022 following a visit by a noise officer on 5th November 2022. The notice was breached on 26th November 2022 resulting in a Fixed Penalty Notice (FPN) being served on 2nd December 2022.
 - h. Officer notes state that on Saturday 12 November 2022, a person called 'Mazlum' advised that he would instruct a sound engineer. However, it appears this was not done until 11th January 2023. Two months later and after this review application had been submitted.
 - i. Since this licence review application was submitted, a further 5 noise complaints have been received. When officers visited, music was audible but was not deemed to be a statutory nuisance. Music does not have to be deemed so loud that it is a statutory nuisance under the Environmental Protection Act 1990 to undermine the prevention of public nuisance licensing objective.

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- j. As detailed in Annex 9 (page 96 of the report), Trip Advisor Reviews show even customers believe that the music is too loud.
 - k. The Licensing Authority are of the view that the premises is not suitable for music other than only background level.
 - l. This premises has received a significantly high volume of complaints, compared to other like for like premises. It has only been open for a few months and significant issues have already been evidenced.
 - m. In conclusion, the Licensing Authority recommends that the following condition be added to the licence (meaning the premises would only be permitted to provide background level music):
 - Section 177A does not apply to this premises licence and this condition does not permit any regulated entertainment, including live music, recorded music and DJ music.
 - n. If the Licensing Committee is not minded to disapply Section 177A of the Licensing Act 2003 then the Licensing Authority would recommend that the Committee, consider attaching the alternative conditions set out on page 168 of the report.
3. The statement of Ned Johnson, Principal Officer, on behalf of Joynul Islam, Commercial Nuisance Officer:
- a. Since the premises had opened in October 2022, the noise team started to receive noise complaints from residents above the commercial premises about loud amplified music intruding into their homes.
 - b. Officers from the Council's out of hours noise team visited residents on several occasions and witnessed a statutory noise, in terms of nuisance, under the Environmental Protection Act 1990. At all times, throughout the complaints received, officers had visited the premises and spoke to the owner about loud music.
 - c. As there had been a noise nuisance received, the team served a Noise Abatement Notice on the 11 November 2022, requiring the abatement of the noise nuisance forthwith. This was a very straightforward procedure if the volume is turned down. Hence the noise team never gave any time period for compliance because the control is to turn the volume down.
 - d. Complaints continued to be received and the noise team witnessed a breach of the Abatement Notice at the end of November 2022 for which a fixed penalty notice was served to deal with the breach.
 - e. Following the on-going complaints, the owner commissioned an acoustic report by Clement Acoustics, who came in and did some airborne sound installation testing.
 - f. From the testing, the consultant then worked out the suitable sound setting for a noise limiter for the DJ booth of the premises. The spectrum that was provided, it was clear that if the premises are meeting NR14 which is low, there shouldn't be any further noise issues from the music being played in the restaurant.

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When Ned Johnson looked at the recommendations for NR14 (which is low) he did think that if the team were still receiving complaints, then something was wrong, or the report was wrong. However, looking at the report, the consultant had followed exactly the procedure for airborne sound insulation testing and looked sound to him.

- g. Ned Johnson and Joynul Islam also had a meeting with the owner of the restaurant and had discussed the right insulation to install. In terms of the speakers, they needed to be isolated from the structure as they were bolted directly onto the ceiling. Therefore, anti-vibration mats were required and discussed the noise limiter. It was made clear that the noise limiter had to be installed and always working to prevent any further issues to residents. The owner was happy with the discussions and agreed to because as he had commissioned the report and to follow the recommendations.
 - h. Since January 2023, the noise team had received some further noise complaints, but none were seen to be a statutory nuisance. The last complaint was received on the 17 February 2023 for noise.
4. In response, the following comments and questions were received:
- a. Councillor Taylor asked if the premises followed the recommendations from the acoustician i.e. noise limiter, noise insulation, would the residents above the premises hear any noise. Ned Johnson advised that there will always be some flanking paths for sound and there would never be complete silence. If the noise limiter is set to the requirement recommended in the report, there wouldn't be any noise nuisance and any music heard would be at a very low level and shouldn't be above ambient noise but around ambient levels. No louder than normal living activity i.e. TV.
 - b. In response to Councillor Pratt, insulation to the hung speakers was a recommendation within the acoustics report. Councillor Pratt also referred to the recommendation regarding the installation of an independent ceiling in the restaurant. He was advised that this recommendation was if the owner wished to play music louder than the recommendation of NR14. This was what the acoustician recommended but was happy with the installation of the noise limiter.
 - c. Mr Ranatunga, legal representative to the owner, referred to Appendix B (page 93 of the report) which was Mr Joynul Islam's (Commercial Nuisance Officer) representation. He confirmed to Ned Johnson that a noise abatement notice, and a fixed penalty notice were issued in November 2022 to the premises owner. This was confirmed, which was before the acoustician had carried out a survey of the premises. Mr Ranatunga then referred to the penultimate paragraph on page 94 of the report. He read out a passage 6 lines up from the end of the paragraph

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- and also the final paragraph. Ned Johnson did not depart from Joynul Islams representation as he had discussed it with him.
- d. Ned Johnson, in reply to Mr Ranatunga, confirmed that the sound system was installed on ceiling mounted rails directly onto the ceiling. However, if speakers are attached directly to a concrete structure this allows transmission there. For low frequency sound, which will travel through, isolating it will cut off a potential path upwards. Mr Ranatunga stated that one of the conditions offered by the owner is the Neoprene fixing which would deal with that.
 - e. In response to the Chair's enquiry regarding the officer who visited the flats above the premises when the initial noise complaints were made, Ned Johnson confirmed that everything was dealt with by Mr Islam or the out of hours noise team.
 - f. The Chair enquired what time other restaurants closed in the area. Ellie Green (Principal Licensing Officer) would research this and report back to the Committee.
 - g. Had the owner taken the necessary steps as the noise team had asked for. Ned Johnson confirmed that the owner did the correct things. He employed a reputable acoustic consultancy. They performed tests expected from them by Ned Johnson, made good recommendations, good acoustic engineering and installed the noise limiter which is being used.
5. The statement of IP1, owner of Flat 14 Braemore Court.
- a. He represented residents of Braemore Court and was providing a summary of the situation at present.
 - b. The noise limiter had been installed but on several evenings it had been noted that it was turned off allowing music to be loud enough to cause a nuisance.
 - c. When the noise limiter is turned on, intermittent faint music and bass can still be felt in the residential properties which is intrusive. The sound of customers shouting and singing over the music can be heard aswell.
 - d. Residents had also been woken up at 3:00am by kitchen preparation involving loud metal banging, dragging and loud chopping.
 - e. The acoustic report recommends the installation of a ceiling, this would further mitigate the sounds of kitchen preparation and sounds of customers. This yet has not been installed.
 - f. We support and welcome the Licensing Authorities proposal that no regulated entertainment is permitted at any time.
 - g. As residents living above the restaurant, what further measures would the LSC be asking for.
6. In response, the following comments and questions were received:
- a. Councillor Pratt asked if it was just himself that could feel the bass beat in his flat or other residents also. IP1 clarified that the acoustic report said that this is a prediction of what the noise limiter would do. The bass beat can still be felt and can hear

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- customers shouting. The bass beat is fainter but there are moments it can be felt through the sofa.
- b. Councillor Taylor asked what evidence IP1 that the noise limiter had had been turned off. IP1 clarified that these were the photos in the report, and he also had videos.
 - c. In response to the Chair's enquiry about where the complainant residents lived, Charlotte Palmer (Senior Licensing Enforcement Officer) clarified that all the complainant residents live in the flats above the parade in 8 different residential addresses. Between 20/10/22 – 10/12/22, 18 noise complaints were received from 8 different residential addresses.
 - d. Mr Ranatunga referred to Appendix D in the report and the NARTS submission (page 115 of the report) showing photos from outside the premises, a series of letters sent to residents and a photo of the numbered flats above the premises (page 118 of the report) who the applicant had consulted with. IP1 confirmed he lived in one of the flats shown in the photo at page 118 of the report, and that the PLH and acoustician had gone to his flat to set the levels of the noise limiter.
 - e. IP1 confirmed that he did have the PLH's phone number and was told by him to make contact as regards any noise issues/problems. However, IP1 had only made contact with council officers instead because in the past the PLH had ignored his messages when making contact. Mr Ranatunga didn't accept this because the PLH has been open and co-operative with IP1 throughout.
 - f. Mr Ranatunga stated that since the noise limiter had been calibrated on the 7/02/23 all there has been a log of IP1's complaints.
 - g. Mr Ranatunga referred to a photo on page 6 of the supplementary agenda which IP1 confirmed was taken by him. Taken outside of the premises looking in. IP1 had circled the noise limiter stating that since 7/02/23 the noise limiter was not operating, confirmed by IP1 based on looking at the photo. This was not a basis on which to say that the noise limiter was not operating. When the noise limiter light comes on, this means it is limiting noise. It has been operating on every occasion on which a complaint has been made. A light does not have to be on all the time to show that it is working.
 - h. Mr Ranatunga asked IP1 for if he represented flats 11,12,13. IP1 did not represent those flats.
7. The statement of Mr Ranatunga (Legal Representative) on behalf of the Premises Licence Holder:
- a. The premises are an award-winning high end Turkish Restaurant who are operating in the same fashion as they did at their previous address at 12 Cockfosters Parade.

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- b. Residents were also above the previous premises but never had any problems with council officers, licence reviews or any concerns by residents.
 - c. The new premises had opened in October 2022. Investing significant sums of money re-furbishing the premises including obtaining the acoustic report, setting up the speaker system , calibrating the noise limiter and other matters.
 - d. The restaurant employs 40-50 people. Music and ambient music are an important integral part of the fine dining experience.
 - e. The premises plays background deep house music and not techno music to support the fine dining experience.
 - f. The LSC should trust the Councils noise officers who are the experts and are entirely happy with the acoustic report provided. The consultant and officers set the noise limiter levels and any doubts with that has been backed up with conditions offered.
 - g. Since the noise limiter was calibrated on 7/02/23, IP1 has spoken about complaints but there have not been any substantial noise complaints since then.
 - h. The Commercial Nuisance Officers representation at Appendix B of the report was referred to. The PLH has at all times co-operated with council officers and residents.
 - i. In terms of the owner moving to the new location, it is not unusual to have some issues and teething problems. Council noise team have said that the noise levels can be controlled by the noise limiter and the premises have done that. This review has not been bought by the noise team but by the Licensing Authority.
 - j. Referring to the conditions at page 165 (Appendix F), Annex 3 (page 167) – conditions I, ii, iii, iv & v which are sought by the Licensing Authority if the LSC decides that regulated entertainment is permitted between 08:00am and 11:00pm. The Premises are happy to accept these conditions and included on the licence. The premises have also offered conditions A & B (page 168 of the report). These were not a requirement of the PLH acoustic report and don't see as necessary at this stage.
 - k. This is the 1st review of these premises in this/or previous location and any concerns about noise have been dealt with.
 - l. It is not proportionate to go further than these conditions in the circumstances given this is the first review of these premises. The LSC should impose those mentioned conditions and no more.
 - m. The LSC formal position is to remove regulated entertainment from the Licence. That would be disproportionate on a first review when the council's noise team are content that setting the noise levels through those conditions meets their concern.
8. In response, the following comments and questions were received:
- a. Councillor Taylor recognised that the premises are refuting IP1's suggestion that the noise limiter was turned off. How easy was it

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to turn off the noise limiter? Mr Mahir Kilic (Premises Manager) clarified that the system could not be turned off. Once the sound system is operated and turned on, the music goes from the DJ booth and through to the noise limiter device. To turn off the noise limiter, the entire sound system needs to be turned off or remove the sound system and re-wire away from the noise limiter. It was not possible to just turn off the noise limiter.

- b. If the noise limiter malfunctioned of its own accord then music cannot be played. Condition i (Annex 3 – page 167) states that the noise limiter shall be maintained in effective working order. If it was found to malfunction the premises would be in breach of that condition. There is no evidence that it was malfunctioning and why there has been no noise complaints since 7/02/23.
- c. Councillor Taylor highlighted the acoustic report and recommendations for a noise limiter and the provision of a new insulating potential ceiling which has not been provided. This is detailed at page 139 of the report, Section 9.0 – the 3rd, 4th and 5th paragraphs. In response, Mr Ranatunga clarified that this was because of the 1st paragraph at Section 9 which explains that the expert view is that the noise limiter and measures taken in Section 8 (Mitigation – from page 137) is sufficient. The premises have offered neoprene fixings but is not proportionate at this stage.
- d. Councillor Pratt's comments regarding the neoprene fixing. What was the premises position on the installation of the insulated ceiling for greater separation between the residents and business premises? Mr Ranatunga clarified that the conditions must be both appropriate and proportionate. Their acoustics report does not say that the ceiling is required now. Setting the noise limiter at the appropriate level will deal with noise complaints.
- e. The Chair asked why it was that the premises are now receiving complaints as they had been operating for 10 years with no complaints. The PLH explained that they have been trying to resolve the issues from the onset co-operating with Council Officers. The issues could be initial teething problems moving to a new premises.
- f. Referring to the 40-60 employees of the commercial premises, the Chair asked how many are trained to deal with noise/disturbance at finishing times or would they need more training. The PLH clarified that they have senior management members of staff, front and back of house who are aware of these issues, have been co-operative throughout and have been trained.
- g. In response to the Chair's question regarding complaints, Mr Ranatunga stated that there are 2 flats directly above the restaurant, flat 14 (IP1) and flat 11. IP1 did not represent flat 11 who are also directly above the speakers but are happy. IP1's

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- sensitivity had led to complaints. In response IP1 stated that flat 11 have an insulated floor hence no complaints about noise.
- h. Charlotte Palmer was concerned about the position of the speakers. She referred to the Acoustic report at page 137, Section 8.2 which was read out. The acoustic report is recommending that something else be put in between the speakers and the ceiling as an extra soundproofing. Had that been done? The PLH advised that this had not been done.
 - i. Mr Ranatunga stated that they could put the neoprene fixings in which is why there is a condition to that effect. Charlotte Palmer clarified that this may be why some residents were still experiencing lower-level noise because the recommended neoprene fixings had not been installed.
 - j. In response to Charlotte Palmers question regarding any future noise surveys once the recommendations have been installed, Mr Ranatunga referred to condition 2 which requires a re-calibration of the noise limiter annually.
9. Ellie Green provided answers to previous comments made:
- Skewd Kitchen first premises at 12 Cockfosters Parade – No review action against those premises Does not have music specified as a licensable activity on that licence and the hours of the premises was to close at mid-night and alcohol sales to cease at 11:00pm.
 - On a search of 9 premises of restaurants of a similar nature to Skewd Kitchen along the Cockfosters Road including Heddon Court Parade, Station Parade and Cockfosters Parade:
 - i) 5 Have not got music specified on their licence.
 - ii) 2 have got live & recorded music till 12:30am latest.
 - iii) 2 have 24 hours for recorded music.
10. The summary statement from Ellie Green, Principal Licensing Officer:
- a. That the LSC only consider information relating to licensable activity and music. The kitchen activity and chopping are not a licensable activity, cannot condition anything to that activity and will be dealt with separately by the Council Noise Team.
 - b. Having heard all of the representations the Licensing Sub-Committee must take such steps as it considers appropriate for the promotion of the licensing objectives:
 - To modify the conditions of the licence
 - To exclude a licensable activity from the scope of the licence
 - To remove the designated premises supervisor
 - To suspend the licence for a period not exceeding three months
 - To revoke the licence
 - c. Annex 2 (from page 47 of the report) directs you to relevant policy and guidance sections relevant to this review.

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11. The summary statement of Charlotte Palmer, Senior Licensing Enforcement Officer:
 - a. The Local Authority still recommends that a condition be added to the licence. So that the premises can only be permitted to provide background level music. This is because the recommendations in the acoustic report still haven't been put in place yet and may be why there are still problems with residents.
 - b. In addition to the acoustic report, the premises speakers should have neoprene fixings for vibration isolation.

12. The summary statement of IP:
 - a. We welcome the support from the Licensing Authority to remove the rights for regulated entertainment.
13. The summary statement of Mr Ranatunga (Legal Representative) on behalf of Skewd Kitchen:
 - a. To meet the concerns here, I say its proportionate to impose the 4 conditions mentioned that are agreed. We accept the point that the neoprene fixing condition aswell which is proportionate to do as recommended. To go further than that on a first review would be dis-proportionate.
The previous premises and licence is materially identical to this one at the new premises. We did not have music as a regulated activity there and don't have that here either because it is de-regulated under the live music act.

RESOLVED that

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Application was made by the LICENSING AUTHORITY for a review of the Premises Licence (LN/201500538) held by MR MAZLUM DEMIR at the premises known as and situated at SKEWD KITCHEN, 113-115 COCKFOSTERS ROAD, COCKFOSTERS, EN4 0DA.

The Licensing Sub-Committee RESOLVED that it considers it to be appropriate for the promotion of the licensing objectives to modify the conditions of the licence.

Conditions to be added to premises licence:

A. Section 177A of the Licensing Act 2003 does not apply to conditions B, C, D, and E.

B. A noise limiting device shall be installed to any amplification equipment in use on the premises and shall be maintained in effective working order. The noise limiter should be set so that noise does not emanate from the premises so as to cause a nuisance to nearby properties.

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C. The noise limiter shall be recalibrated annually to ensure that the music volume does not exceed the level at which a noise nuisance to neighbours will occur. A copy of the calibration certificate shall be kept on the premises and made available to the Police or Council Officer on request.

D. All loudspeakers should be isolated from the building structure. For fixed speakers, this should be achieved using neoprene fixings for all speaker mountings. For free standing speakers, these should be sited on a suitable isolating material.

E. DJs should be reminded of the requirements and be trained in the proper use of noise limiting equipment and the appropriate control of sound systems.

Reasons:

The Chair made the following statement:

“The Licensing Sub-Committee have decided after hearing the parties and considering all the evidence in the agenda that it is not appropriate to disapply section 177A of the Licensing Act 2003 so that only background music is permitted at this stage.

However, the LSC does believe that the five conditions (as set out above) are required to promote the prevention of public nuisance, and by disapplying section 177A to these conditions, the conditions must be complied with at all times the premises licence is in use.”