

## ADAM & EVE PH, HACKNEY – ACOUSTIC NOISE EXPERT REPORT (LICENSING)

---

### Acoustic Expert CPR Part 35 Report of Peter Rogers

Dated:

02 June 2023

---

Specialist Field	:	Acoustics
Review Ref	:	LBH-PRE-T-0056
On behalf of	:	Michael Nicholas Rose Seven Ltd.
Prepared for	:	Niall Forde, Licensing Con.
On Instructions of	:	Niall Forde, Licensing Con.
Survey Periods	:	28 <sup>th</sup> to 30 <sup>th</sup> April, 26 <sup>th</sup> to 30 <sup>th</sup> May 2023

**Report Reference: 23-0063-0 R01 PR**

**Author: Peter Rogers BSc(Hons) MSc CEng FIOA FRSA MIOL**

Unit 1, Gander Down Barns, Ovington, Hampshire, SO24 0HS  
T +44 (0)1962 858800 E [sa@sustainableacoustics.co.uk](mailto:sa@sustainableacoustics.co.uk) W [www.sustainableacoustics.co.uk](http://www.sustainableacoustics.co.uk)  
Registered in England • Company No 08149321 • VAT Registration No 180557205

*[Report format based on Academy of Experts Model Form]*

## Acoustic Expert CPR Part 35 Report of Peter Rogers

# ADAM & EVE PH, HACKNEY – ACOUSTIC NOISE EXPERT REPORT (LICENSING)

---

Report No.: 23-0063-0 R01 PR

Date: 02 June 2023

---

Prepared by:

**PETER ROGERS**  
BSc(Hons) MSc CEng FIOA FRSA MIOL



Managing Director: Peter Rogers BSc(Hons) MSc CEng FIOA FRSA MIOL

Unit 1, Gander Down Barns, Rodfield Lane, Ovington, Hampshire. SO24 OHS  
T +44 (0)1962 858800 E [sa@sustainableacoustics.co.uk](mailto:sa@sustainableacoustics.co.uk) W [www.sustainableacoustics.co.uk](http://www.sustainableacoustics.co.uk)  
Registered in England • Company No 08149321 • VAT Registration No 180557205





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---

## CONTENTS

0	NON TECHNICAL SUMMARY.....	4
1	INTRODUCTION .....	4
2	SYNOPSIS .....	11
3	TECHNICAL EVIDENCE .....	23
4	OPINIONS .....	37
6	CONCLUSIONS .....	41
7	FURTHER WORKS.....	42
8	EXPERT’S DECLARATION.....	43
	GLOSSARY .....	45
	APPENDIX 1 NOISE MANAGEMENT PLAN.....	49



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

## 0 NON TECHNICAL SUMMARY

- 0.1.1 As an independent expert in acoustics my duty is to the London Borough of Hackney Licensing Sub-committee in technical matters associate with noise, which overrides my obligations to my clients. As far as I am aware this is the only expert evidence on noise in this matter, and so it is unchallenged and set out here in summary to assist the Sub-committee.
- 0.1.2 Based on the factual evidence and technical objective evidence now available to me I have been able to assess the people noise being generated by the existing operations of the Adam and Eve Public House (the “Premises”). This includes a previous acoustic assessment the Sub-committee were not convinced would be adequate, and now measurements made over 5 separate representative evenings of operations in April and May bank holiday weekends, when the weather was fair to good.
- 0.1.3 At the previous hearing related to an application linked with external area there were 10 representations. In this Review there are now only 3, 2 of which are likely to be residents. The police have not objected on noise grounds and Environmental Protection has indicated that they have received some ongoing complaints, but have not currently found evidence of a nuisance to exist. They are under a statutory duty to investigate such complaints, so this is of material importance when considering the weight to give to unvalidated nature of the complaints set out in the representations. At face value there is no objective evidence offered to support the allegations that the licensing objective in relation to public nuisance is being upheld.
- 0.1.4 I have inspected the Premises and the works completed to date to reduce noise impact from the outside area, as well as break-out from the inside areas. Largely I am of the opinion that this has been effective in reducing noise escape from inside to be well below noise levels that would be expected to cause justifiable complaints from residents.
- 0.1.5 In terms of the noise from people in the external areas I understand this to be the main focus of the Review. The path for noise to escape has now been largely controlled to one area, which is through the open top of the smoking area. The rest has been enclosed and contained. The works previously proposed have been completed, and have reduced noise impact by a noticeable degree at residential, based on the measurements taken by DO Acoustics. I too have found a similar reduction , which supports their findings.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

- 0.1.6 I have considered the actual noise levels reaching residents as a result over 5 operational periods in good weather conditions and found that average noise levels over the busiest and noisiest evening period (7 to 10pm) after which it is closed except for use by small number of smokers, do not cause noise levels at the houses facades or in the gardens that indicate more than an observable impact.
- 0.1.7 This description indicates that although the noise from people in the external maybe readily identifiable as noise from people it is at a level, given the context of the urban surroundings and historical use as a pub for many years, where against British Standard targets it would be possible to build a new residential without any particular mitigaion to control noise impact. This provides confidence that the degree of impact is not sufficient to meet the high bar of nuisance, although soe degree of impact inside homes might be caused.
- 0.1.8 It is my opinion that the review has not been brought on the basis of any technical evidence, but on the strength of complaints of two people living in the vicinity of the Premises. There is no supporting objective evidence that nuisance has or is being caused, or that it would be so broad as to affect a number of people. As such the evidence does not support that a public nuisance has been caused, and the aim to promote prevention of public nuisance therefore remains intact.
- 0.1.9 That is not say that the noise impact could not be improved and reduced further for residents, which is part of meeting that objective. I have set out ways in which this could be done in a progressive way, which combines noise control interventions with improved manage practices.
- 0.1.10 It can be concluded therefore that there is no technical evidence supporting the Review, and that it should be dismissed on that basis.
- 0.1.11 Where the Sub-Committee wished to secure reassurances then the proposed condition wordings contained in Appendix A as part of the Noise Management Plan, could be drawn upon.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

## 1 INTRODUCTION

- 1.1.1 This expert report has been prepared in line with Civil Procedure Rules (CPR) Part 35 and the practice guidance. The matter instructed by the claimants relates to the alleged intrusion into the homes of people noise from the garden of from the long-established Adam & Eve Public House, 155 Homerton High Street, Hackney, London, E9 6AS ('The Appellants') to residential premises in the vicinity whom have made representations to the Licensing Sub-Committee as part of a Review brought by London Borough Hackney (LBH). No Noise Abatement Notice has been served or evidence confirming that any complaints have been found to be justified, and no technical evidence on noise has provided to the committee in support of the Review application.
- 1.1.2 Acoustics investigations were completed in early 2022 by DO Sound, which make a set of recommendations within their report dated 6<sup>th</sup> March 2022, of which a number were implemented.
- 1.1.3 In additional visits by members of the Environmental Protection at LBH also resulted in some advice to the licence at the time DO Acoustics visited, which resulted in some timber fencing being erected around the pub external area at height, which has been completed as suggested noise mitigation, but is not overly effective.
- 1.1.4 My own investigations assessed the actual people noise being generated by the premises currently, from monitoring over the weekends of the 28<sup>th</sup> April 2023 and Bank Holiday weekend of the 26<sup>th</sup> to 30<sup>th</sup> May 2023, when the weather was fair and use of the external areas representative.
- 1.1.5 I will also provide the supporting evidence for the history of the premises and complaints, plus a description of the character of the area and context that the committee should take account of.
- 1.1.6 This expert report sets out the results of my investigation and my opinions on the key question of whether nuisance broad enough to be a public nuisance under the Licensing Act 2003, to provide justifiable grounds for a Review being brought. In addition, it is explored whether actions have been taken to prevent public nuisance, if these actions have resulted in improvement, and if they can be extended to ensure that the use of the outside areas can be properly balanced against the need to protect the common use of homes in the area.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

## 1.2 Formal Details

- 1.2.1 My name is Peter James Rogers (PJR) of Sustainable Acoustics, Unit 1 Gander Down Barns, Ovington, Hampshire, SO24 0HS and I practice as a Consultant in Acoustics, Noise and Vibration. I have been professionally involved in acoustics for over 30 years, initially as a local authority authorised officer for 5 years and thereafter as a consultant and business owner. I have undertaken noise and vibration measurements and assessments throughout my professional career, and, specifically to this case, worked on the assessment of noise from entertainment and licensed premises settings. I also provide regular lecturing and training to members of the Institute of Licensing on noise matters at their annual national training event.
- 1.2.2 My specialist field is in acoustics, with a particular expertise in buildings and environmental acoustics, assessment of noise and vibration, its impact on the human body and its control. I am also an expert in the policy and implications of the case law that applies to nuisance. My experience as a consultant, lecturer and in local government on issues of planning, licensing and nuisance allows me to be able to take a balanced view of the evidence and form objective and subjective judgements based on these regimes. In this case I am focusing on the Licensing regime, with regard for Statutory Nuisance.
- 1.2.3 I hold a Bachelor of Science honours degree in Physics with Medical Physics from the University of Cardiff, Wales and a Master of Science degree in Environmental and Building Acoustics from London South Bank University. I am also a Chartered Engineer, a Fellow of the Institute of Acoustics, a Fellow of the Royal Society of Arts and a Member of the Institute of Licensing. I am currently a Trustee of the Institute of Acoustics, and I am a registered and vetted member of the Register of Expert Witnesses and Expert Witness Registers.
- 1.2.4 My field of expertise covers the particulars of this investigation, and enables me to form opinions of an expert nature that reflect an industry view. I have not acted for either party at any time in the past, to the best of my knowledge.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

1.2.5 My expertise is limited to not commenting on medical matters or medicines, or health effects associated with medical matter (although my educational knowledge does include biological details of the ear and hearing system); where these are mentioned they are done so as part of providing witness of factual evidence only. My expertise does not include comments on legal matters that are beyond my expertise and where it is mentioned it is intended to signpost relevant points from a technical perspective and not offer an opinion on a legal position.

### 1.3 The Relevant Parties

The following parties will be referred to in this report:

- i. London Borough of Hackney Council ('LBH' – Licensing Authority)
- ii. London Borough of Hackney Council, Environmental Protection ('LBHCEP' – Consultee to Licensing Authority)
- iii. Resident 1 - (Coopersale Road)
- iv. Resident 2 - (Glyn Road)
- v. Resident 3 - (Unknown address)
- vi. Peter Rogers, Sustainable Acoustics Limited ('PJR' – Independent Acoustics Expert)
- vii. Michael Nicholas, DPS of Adam and Eve ('MN' – The Premises)

### 1.4 The Documents Considered

The following documents have been considered as part of the bundle and may be referred to in this report, although are not appended to it:

- i. Acoustic Report, dated 6<sup>th</sup> March 2022
- ii. Instrumentation (Appendix 2)
- iii. Noise Management Plan (Appendix 5)
- iv. Application to Review Premises Licence
- v. Decision 28-07-2022 of Licensing Sub Committee D
- vi. Environmental Protection Representation, 19<sup>th</sup> April 2023





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

- vii. Representation ANON (Coopersale Road), 18<sup>th</sup> April 2023
- viii. Representation ANON (Glyn Road), 18<sup>th</sup> April 2023
- ix. Representation ANON (no address), 19<sup>th</sup> April 2023
- x. Proposed Amended Plan
- xi. Proposed Conditions

This list is for the new information bundle only.

## 1.5 Structure of the Report

The contents of this report follow Civil Procedure Rules and the requirements and the latest Practice Direction 35 for experts and assessors. Rule 35.5 requires that an expert's evidence is given in a written report unless the courts direct otherwise, which has not been the case to date. 35.10 states that an expert's report must comply with Practice Direction 35. The report is prepared cognisant of sections 3.1 to 3.3 in particular, and includes:

- 1) Expert's qualifications
- 2) Documents considered
- 3) Expert's disclosure
- 4) Statement of facts, including instructions from Solicitor and directions of the Court
- 5) Technical evidence
- 6) Opinions
- 7) Further works
- 8) Conclusions
- 9) Statement of Truth
- 10) Glossary and Appendices

## 1.6 Directions & Instructions

1.6.1 The initial instructions were provided by Niall Forde, a Licensing Consultant on the 12<sup>th</sup> April 2023, over email. This included a request to "*come and do a survey*" and "*attend to provide oral evidence at any licensing hearing*". Following a conference with counsel this became a refined instruction to:

- Visit the site and complete a visual inspection;



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

- Complete monitoring of noise levels from the patrons using the garden over weekends representing the busier times;
- Consider whether the noise levels experienced might be considered likely to cause impacts that might justify complaints of nuisance, and whether that might be sufficiently wide enough to be considered a Public Nuisance;
- Review the grounds for Review and any associate technical evidence supporting it;
- Prepare an expert report (CPR Part 35 compliant) capturing my evidence and opinions, and recommendations for addressing the impact cause by people noise in particular, but also general noise form the premises during its operation; and
- Attend the hearing to provide oral evidence to assist the Licensing Sub Committee to understand the technical aspects of the acoustics evidence.

## 1.7 Disclosure

1.7.1 I am aware of my duty as an expert under Part 35 of CPR, and recent changes in 2019 on disclosure and confirm that there are no matters to my knowledge which require disclosure or that I have not included within this report, which are relevant to this case.

## 1.8 Terminology & Abbreviations

1.8.1 Acoustic technical terminology is contained in the Glossary to this document, but the following abbreviations are used throughout:

- BPM – Best Practicable Means
- NAN – Noise Abatement Notice
- EPA – Environmental Protection Act 1990

## 1.9 References, CASE LAW & Publications Referred To

The following documents or web materials have been relied on in the preparation of this report, listed in alphabetical order and the item references used to cross reference to the full reference hereafter:

- i. Andreae v Selfridge [1937]



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

- ii. Biffa Waste Services Ltd [2012] EWCA Civ 312
- iii. Coventry & Lawrence [2012] EWCA Civ 26:  
<https://www.bailii.org/uk/cases/UKSC/2014/13.html>
- iv. Halsey v Esso Petroleum Co. Ltd [1961]
- v. Knight Bruce VC in the Walter v Selfe case of 1851 (4 De G&Sm 315, at p 322)  
  
Fearn and others (Appellants) v Board of Trustees of the Tate Gallery (Respondent) [2023]  
UKSC 4 <http://www.bailii.org/uk/cases/UKSC/2023/4.html>
- vi. Vanderpant v Mayfair Hotel Co. Ltd. [1930]
- vii. Wivenhoe Port v Colchester BC [1985]

## 2 SYNOPSIS

### 2.1 HISTORY

- 2.1.1 The synopsis which follows includes the consideration of the history that led up to LBH calling a Review of the premises' licence, citing public nuisance as the grounds.
- 2.1.2 The current operator took over the operation of the Premises in December 2013, and the garden was opened for use in the Summer of 2014, but the premises has been used as a public house with an outside area used by patrons long before this, with housing existing in its present locations.
- 2.1.3 LBH suggested complaints of noise from the outside areas began before Covid-19 lockdown restrictions, and continued when lockdown eased in April 2021 as the business struggled to survive when using the extended outside areas as a necessity (as inside areas could not legally be used for customers). It is suggested the business "*failed to take any action*" over this period, which was a time when the operators' efforts had to be focused on preserving jobs and survive as a going concern over a very difficult period of trading.
- 2.1.4 The engagement of LBHEP is understood to have led to some changes being made. No formal action has ever been taken by LBHEP, which would be a duty under the EPA should a nuisance have been established to exist. The Premises continued to try to improve their noise controls measures after those contacts, then commissioning an independent acoustic report, which also made additional



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

recommendations that were largely implemented ahead of an application to regularise the use of the outside areas. This included stopping use of the side area closest to residents altogether.

2.1.5 An application was then made by the Premises in to regularise the use of the external in November 2021, but this was rejected following 10 representations (which included mainly residents), on grounds of public nuisance; notably no objections from Environmental Protection and the Police were submitted, who had agreed conditions would adequately control the noise from the outside areas. The decision notice made clear reasons why the Sub-committee felt they could justify their decision as including that there was *“nothing new in the application that addresses the existing problems, given the concern and unresolved problems”*. The Sub-committee considered the noise report, but considered that the proposed noise mitigation measures and changes were *“not enough to resolve the noise issues”*. The noise report had stated that the noise had reduced, but local residents reported no noticeable difference (which may in fact relate to the acoustic barrier that had its origins in an LBHEP suggestion).

2.1.6 The Sub-committee wanted the applicant to *“sort out their process and procedures and that should be demonstrated”* for the existing licence before applying for a new one. Their expectation was that noise should *“not lead to significant noise nuisance and disturbance to local residents”*.

2.1.7 There has been no evidence of formal investigation by LBHHP or any objective or expert evidence put before the Sub-committee to support these claims by representors, beyond the word of the representations themselves. This did not include any substantive evidence from LBHHP (beyond the existence of five unsubstantiated complaints) or any evidence of Police objections. I am therefore unable to assess any objective technical evidence supporting this Review, beyond the facts that complaint details have been provided from the representatives that exist. These have seemingly not been validated by LBH, despite the assertion by one resident that they had in their submission.

## 2.2 GROUNDS FOR THE REVIEW

2.2.1 The application for the Review is set out by the Licensing Authority as relating to the prevention of public nuisance licensing objective. It goes on to state:

*“the use of external areas labelled “Bottle Store” and “Covered Yard” continues due to further complaints being received. Therefore there remains a need to resolve this matter as the complaints suggest that the activities are still causing nuisance to members of the public.”*



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

2.2.2 Instances of complaints between the 30<sup>th</sup> July 2022 and 18<sup>th</sup> February 2023 to 9:47 pm have been cited. The application also states:

*“I am aware that works have been carried out to mitigate noise outbreak from the garden. However, as far as can be seen, there has been no independent or external assessment of the effectiveness of these works. The complaints received also suggest that these works have not been effective”.*

2.2.3 The Review therefore seeks to modify the Licence to amend the annexed plan to remove the previously labelled “bottle store” and “covered yard” from customer use and add certain conditions , including regular monitoring by staff and restricting use of the outside area to end by 10pm after which only 8 smokers at a time will be redirected to the front of the premises at any one time.

2.2.4 The number of representors has fallen from 10 to 3, perhaps in itself this is indicative that that things are likely to have improved as a result of the efforts made.

2.2.5 To meet the Sub-committee’s expectations it would seem important to complete an independent review of the likely impacts upon residents on Coopersale and Glyn Road, based on objective evidence and regard for the context which are all part of considering and assessing nuisance. This has not been done by LBHEP to date, and it would seem the Review has no evidence of existing or an ongoing nuisance, and it is highly unlikely that even if 3 complaints were validated that this would be a sufficiently broad impact to be considered to constitute a Public Nuisance.

## 2.3 CHARACTER OF AREA

2.3.1 The area is within Hackney, and is an area of inner-city London characterised by road traffic, people on the streets and shops providing convenience services. The road and nearby underground railway line, together with aircraft overflights, makes this an area dominated by transportation noise. There is a bus stop just to the east of the public house served by the 236, 276, 308, 488 and W15 services. The roadside mix of commercial premises (including retail) that is at ground level has residential flats above in many examples, and a residential mix with commercial operations that blends into side streets that become more dominated by terraced housing. The soundscape in this area has a relatively high noise level, and low soundscape quality. The side of the terraces facing away from the road enjoy a marginally quieter aspect and slightly improved soundscape quality, although is it not particularly quiet.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---

- 2.3.2 The Premises' outside space is overlooked on both sides by the rear of housing which faces onto the road, but which are largely rented properties (some of which are understood to be social housing). The relevance of this is there seems to be a tendency for residents of these properties not to complain, according to MN. The properties that face onto the surrounding streets and backyards and gardens overlooking the Premises are understood to be occupied by a different demographic, which include those who have offered representations in the past. There are none the less far more properties than the 3 submissions received (assuming they all originate from the immediate vicinity). One is perhaps a Councillor not in the direct area, so there may be submission from just one or two local addresses. Given the scale of the objection being much reduced, this is not supportive of a public nuisance existing for the ongoing operations.
- 2.3.3 The soundscape affecting these properties is likely to be akin to a shielded roadside inner-city terrace, which has faced onto the rear of the Premises with people outside to some extent for many years.
- 2.3.4 Opposite the premises and slightly further down the street, towards the underground station, is another licensed premises with a garden, which backs on to Vivienne Cohen House, a mental health services facility operated by the NHS. This demonstrates that the Premises is similar in its type of operation to others very nearby, and in-keeping with the character of the area.
- 2.3.5 The vicinity is not a particularly quiet location, nor one in which the sound of people using the outside area of the premises would have been unfamiliar in the past or is now unfamiliar given noise from people passing through the area or using the existing external smoking area of the premises.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

## 2.4 NUISANCE & IMPLICATION OF RECENT CASE LAW FOR PUBLIC NUISANCE WITHIN LICENSING

- 2.4.1 It is a matter of fact that there has been no Noise Abatement Notice (NAN) served on the premises for the alleged nuisance, which the representations suggest is occurring “continually”. It is a duty on LBHEP to investigate and take action under the Environmental Protection Act 1990 (EPA), where a nuisance is found to exist and be likely to recur. There is no evidence of a verified complaint history adduced from residents, despite written requests made of LBHEP on the 23<sup>rd</sup> and 25<sup>th</sup> May 2023. Officers Gurch Patti and Ashraful Haque were directly requested for this information by the author. Nothing has been provided at the time of writing, and their responses are covered in 3.3.27 to 3.3.28.
- 2.4.2 It can be reasonably taken from the lack of evidence that a nuisance exists that it does not, and is not likely to recur; or it would be a duty on the Local Authority to investigate and act by service of an abatement notice (NAN). Even if a nuisance did exist (but had not yet been substantiated) it would still need to be demonstrated that this was so wide as to affect a cross section of the public in this way to indicate a Public Nuisance, and affecting just one or two people is not sufficient to indicate this threshold has been met. Some noise impact is allowable, and is a part of living in London, and the principle of live and let live is a strong basis on which to begin an understanding of what a nuisance may or may not be.
- 2.4.3 The law on nuisance has recently been affected by a Supreme Court judgement (Fearn v Tate – see reference iv), which simplifies the considerations largely down to whether the “ordinary use” of a person’s property is materially affected by the noise. The threshold for this impact is a high one, and must be substantial, taking on board the concept of give and take and that to be simply annoyed is not enough to indicate a nuisance; for nuisance to be concluded, noise must stop the property being used in the way it was intended. In addition, Coventry v Lawrence (ref ii) supports that when a use is established over a long period of time, even though the noise may cause impact that it would not be a nuisance where it was effectively a prescribed use that results from the use of the outside area which has been used in the way for a long time. It is not enough therefore that people noise is causing an impact, but this must be such increased to be a change that might be considered substantial in its impact.
- 2.4.4 The history of this premises being used as a Public House is very long established, including the outside area. The sub-committee therefore need to be decide whether the opening up of the outside



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

area, to include the use of the “bottle store” and “covered yard”, compared with the pre-covid way of using only the central smoking garden area, has caused such an intensification of its use that the impact of the noise generated is substantially greater than it has been in the past.

2.4.5 The impact of noise must also be proven to hinder the ability of use of the residential property for its intended use. This requires evidence, which currently does not exist. This does not of course mean that residents may not complain that some noise is audible, or that it might cause an impact in the gardens, or even inside the property, but that the impact is so great that it prevents their property being able to be used by the average person. It does not consider whether a person using it is reasonable or not under the Tate ruling, but simply whether the use of the property is seriously affected.

2.4.6 It follows that a public nuisance cannot exist where a large number of properties are not affected in a way that could in their own right be considered to have reached the nuisance bar. According to the representations perhaps one or two properties might be affected by noise from use of the external areas at the Premises, but this has not been validated by LBHHP or the Licensing Authority.

## 2.5 ASSESSMENT OF IMPACT OBJECTIVELY AND MITIGATION BY DO ACOUSTICS

2.5.1 The DO Acoustic report, which was commissioned following initial engagement with LBHEP, relates to noise emissions from the outside areas of the Adam & Eve Public House. It is completed by an individual that is a member of the Institute of Acoustics with over 19 years’ experience. The author is also known to have worked in the recent past within London Borough Islington Council and so is likely to be an active Environmental Health Officer used to making nuisance assessments. DO Acoustics met with D Tuitt (Team Leader for Licensing at LBH) and Ashraf Haque of LBHEP on the 10<sup>th</sup> February 2022.

2.5.2 The recommendations would be expected to have considered the comments and suggestions of those officers carefully, a fact confirmed to me by MH (hearsay) who I understand was present at times during this meeting and could clarify this point to the Sub-committee. DO Acoustics concluded that impacts from noise “*have been assessed and can be controlled*”. The noise mitigation measures proposed included:

- i. Removal of doors to the rear of the external area (completed);





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

- ii. Fitting acoustic seals on doors (completed);
- iii. Confirmation that the rear garden would not be used (confirmed);
- iv. Courtyard to be closed by 22:00 hours and the front of the Premises to be used for limited number of smokers after that (confirmed and being implemented);
- v. TV screens to be used inside only (completed);
- vi. Fitting of solid screen to walled area of rear courtyard to screen properties to north of Glyn Road and Coopersale Road (pending structural investigation – this was implemented);
- vii. Amendments to the Proposed Operating Schedule were also proposed.

2.5.3 Measurements before and after the works were completed with Type 1 sound equipment. A reduction of noise break-out from the external area of the pub to surrounding public areas of between 6 dB to 8 dB were measured, which is a good objective improvement. Evidence of the works completed are included in the DO Acoustics report, and evidence that the noise escape has been limited to what emerges (propagates) beyond the open ceiling of the garden. Monitoring by DO Acoustics did not include measurements of the noise emitted from the garden in that regard, which then propagates and reaches the residents, although some improvements can be expected from the measures taken. This perhaps explains the Sub-committees concerns that they did not consider that the noise mitigation went far enough to address the fundamental concern of noise escaping through the open roof, which I recognise and address further in my assessment.

2.5.4 DO Acoustics spoke with two of the residents during their work, which were a part of those properties referred to in their report, which were Nos. 1A, 3, 5, 7 Glyn Road. The resident at No. 7 expressed a concern of noise to her child's bedroom (see also paragraph 3.2.22). This area could not be assessed but noise at No. 3 was and although people noise was audible in the garden (measured as 59dB(A)  $L_{Aeq,5mins}$ ) it was not audible in the living room.

2.5.5 A number of noise mitigation improvements have been made to minimise noise escape from inside and outside areas, including the restriction of the use of the side garden entirely.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

2.5.6 The advice given in my opinion is likely to have reduced the noise emissions from inside, where the doors are kept closed. This also would provide benefit to the direction of Glyn Road and Coopersale Road to some degree. It was confirmed in post measurements taken by DO Acoustics at No. 3 Glyn Road inside that property the noise from people was not audible. This is a positive indication that there are no grounds for nuisance being caused, provided that occasion was representative of what is typical. The impact in the garden of the resident was noticeable, but not at high levels that would prevent the gardens reasonable use for amenity, compared with aircraft flyovers, bus pass-by or other noise in the area (including that from a smaller number of people in the central uncovered smoking area of the pub).

## 2.6 SUSTAINABLE ACOUSTICS INSPECTION

- 2.6.1 During my visit to the Premises on the 25<sup>th</sup> April 2023 I make the following observations as a result:
- a) The internal sound system is acoustically limited (Soundweb BSS 9088iis system with A Formula Sound AVC4 and localised bar controls) – with a DJ / Ipod plug in point.
  - b) Loudspeaker placements inside are rigidly connected and in some cases close to windows – which may limit the internal sound levels that are allowable, whilst avoiding break-out sound. The one bass speaker is located at the floor not near to the rear area, meaning that only mid-frequency bass thud will penetrate the façade and propagate to residents during the evening periods when DJ’s are performing. This is well controlled and unlikely to be part of the current issue (according to the representors evidence).
  - c) Test of the sound system at operational levels did not result in noticeable sound spill outside, unless the outside door was open, making management of the doors an important issue when music is playing. There was no evidence that music or sound from the television sets was played outside (a historic speaker was identified, but was not connected).
  - d) There are still some gaps under or around the rear external doors from bar areas, which could be improved further with replacement door units or seals, but this will not affect people noise form the garden, so is a lower priority in terms of noise control priorities.
  - e) The external area (now used as a smoking area) is open and is the historic area of use by patrons. It is highly reverberant because of the adjoining areas marked as “Bottle store” and



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

“covered yard”. This is also recognised by DO Acoustics. Treating these areas with absorption has the potential to reduce the sound build-up in the courtyard, which then escapes by as much as 50%, leaving the direct sound from the outside area the remaining issue.

- f) The timber screen around the perimeter of the external area is unlikely to be being effective, as it is reflective and increases the emitted sound source from the areas, rather the sound which hits that edge and absorbing it. To be effective the barriers should be angled in by 30 degrees and internally faced with a perforate absorptive surface (which would require structural design input to see if that is viable). This could be likely to reduce around 20- 30% of the sound energy being emitted to environment.
- g) The blocking up of the aperture from the “bottle Store” area to the side external area (which is no longer used) is effective and makes this a buffer to noise for residents in this direction, forcing the sound emanating from the top of the open courtyard as being the primary route for noise escape, maximising the barrier effect for residents.
- h) Treating the fire exist route to the street, with a lobby to minimise noise escape to residents via this route, would also be beneficial as part of a scheme of mitigaition, but this on its own would make little difference.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

## 2.7 ASSESSMENT OF PEOPLE NOISE

- 2.7.1 Evidence of actual people noise emissions over a weekend were made, which in summary show that during peaks of operation the noise emissions from the open area at the top of the courtyard resulted in noise on the boundaries of residential gardens of 53dB(A)  $L_{Aeq,3\text{ hours}}$ , as a worst case 3-hour average. This average is calculate from continual 5 minute measurements, which give better resolution of how this varies over time. This is not an unreasonable noise level for an urban/ city location such as this, in my opinion. The typical maximum noise levels were just 4dB(A) higher than this at 57dB(A)  $L_{AFmax}$ , although there were some brief higher examples up to 70dB(A), but this may be due to other noise sources in the area.
- 2.7.2 The noise monitoring by DO Acoustics indicated that shorter term average noise levels of 5 minutes in gardens were 59dB(A)  $L_{Aeq,5mins}$ , so the latest measurements indicate reduction of at least 6dB, which agrees well with the measured improvement of 6 to 7dB. There is tangible objective evidence therefore to show that improvements have already made good progress in reducing the levels of people noise experienced by the surrounding nearest residents.
- 2.7.3 When considering the levels of impact against guidance for new properties it indicates that the adverse impact levels may be between low and observable in gardens during the evenings or inside when the over-looking windows are open. When the windows are closed this level of impact reduced to low to none, as supported by DO Acoustics' evidence. This is potentially challenged by the resident of No. 7 Glyn Road, although with no objective evidence . This evidence does not support that a nuisance is currently being caused or is likely to arise in the future. a Public Nuisance is therefore very unlikely in light of this objective evidence.
- 2.7.4 This evidence also shows that further efforts to allow full use of the external areas by the Premiese (described as the "bottling store" and "covered yard") would be advisable to tackle the opportunity to reduce this impact from noise on residents yet further. This in part is due to the acoustics of the space and the effect of people on the ability to absorb sound.
- 2.7.5 The acoustics of the semi-enclosed courtyard result in reverberation and reflections of sound that would result in the sound from only a small number of people (8 to 16) being emitted to the surrounding residential very effectively.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

## 2.8 RECOMMENDED NOISE CONTROL

- 2.8.1 Further noise mitigation measures could be undertaken to minimise the people noise radiating from the outside area, without enclosing it completely, or stopping its use after a certain time.
- 2.8.2 The baseline condition, which would have been experienced by residents over very many years prior to 2018, was the use of the current open-air courtyard. This baseline means that some level of noise from people has been accepted as part of that use, as part of the historic character and context of the area. For up to 50 people levels of 80dB(A) in the external areas would reasonable to expect. During a normal night DO Acoustics measured 83dB(A), which is comparable for this level of occupancy, and indicates that the additional number of people in the other external areas (bottling store and covered area) is not the main issue, when there are enough people to absorb sound. The focus should therefore be to keep the sound inside the space and absorb it before it escapes to the surrounding environment.
- 2.8.3 Step 1 is supported by Observation e) of Paragraph 2.6.1 as the primary mitigation step, which would be to treat the under-croft areas with acoustic absorption, rather than limit the number of people using the area, which in themselves provide absorption when those areas are filled.
- 2.8.4 The second step would be to improve the high-level screenings so that it has some effect, to minimise the sound escaping to environment with the proposals of Observation f) of Paragraph 2.6.1.
- 2.8.5 The implementation of those two steps is likely to reduce the overall noise experienced for all conditions in which people use the external area, and in particular for the worst-case condition of 10 to 50 people, when the reverberation will encourage the Lombard Effect to cause people to raise their vocal effort unconsciously.
- 2.8.6 Step 3 focusses on improving management of the external area, and management of the doors to inside the establishment (see Observation c) and d) of Paragraph 2.6.1). It would be sensible to include this within an updated Noise Management Plan, which could be based on what was previously proposed by Do Acoustics, with some amendments as proposed in Appendix 1 of this report .
- 2.8.7 These measures must be taken as a whole to achieve the best overall improvement for residents and would satisfy the requirements of the Licensing objective to proactively prevent public nuisance. It would also provide BPM, in my opinion.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---

- 2.8.8 In conclusion the residential premises are unlikely to currently be experiencing a nuisance as a result of noise from use of the external areas of the public house, based on the evidence gathered and improvement noise mitigation works completed. There do however remain other steps which could be taken to reduce noise further for residents.
- 2.8.9 In conclusion, there is no evidence supporting that a nuisance, and by extension a public nuisance, was ever caused, as no action has been taken by LBHEP. Furthermore, the drop in number of representations is also a clear indication that the level of complaints have been effected by efforts by the premises, which has continued to do mitigation works. Those complaints have not been validated by LBHEP, who would have had to serve an abatement notice by duty but have not. There is no technical evidential basis for the Review to be brought before the Sub-committee.
- 2.8.10 Despite this an investigation has been completed, and found that noise levels are not now sufficient to be considered likely to cause a nuisance to residents, given the context and character of the area.
- 2.8.11 Some further noise mitigation measures have been proposed, which could be conditioned or captured within an updated Noise Management Plan, if the Sub-committee felt that further confidence was needed in light of the strength of past complaints. This is likely to further reduce impact of noise on residents in their gardens and inside when the windows are open in the evenings.



### 3 TECHNICAL EVIDENCE

#### 3.1 ACOUSTICS MONITORING

3.1.1 Noise was measured at a monitoring position between the external areas and residents over Friday 28th April 2023, when weather conditions were clement and the external area was reported as being typically busy. The operation noise emissions at 4m height to the surrounding area is shown in Figure 1, with the spectrum provided in Figure 3 for the busiest 3 hours.

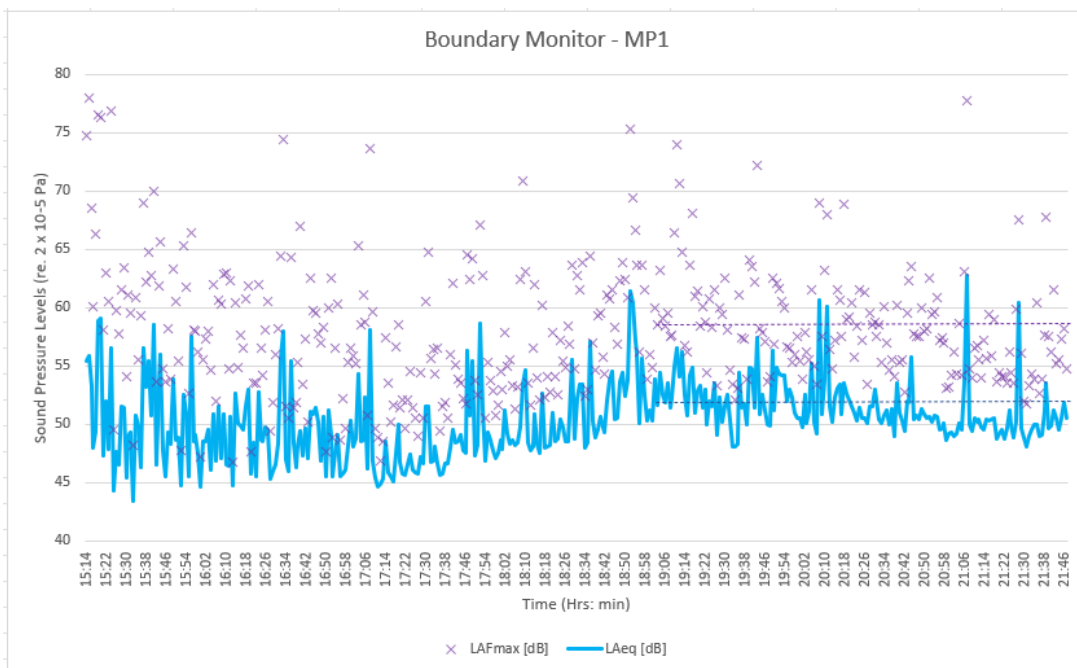


Figure 1: Noise levels at MP1 over the evening of the 28<sup>th</sup> April 2023

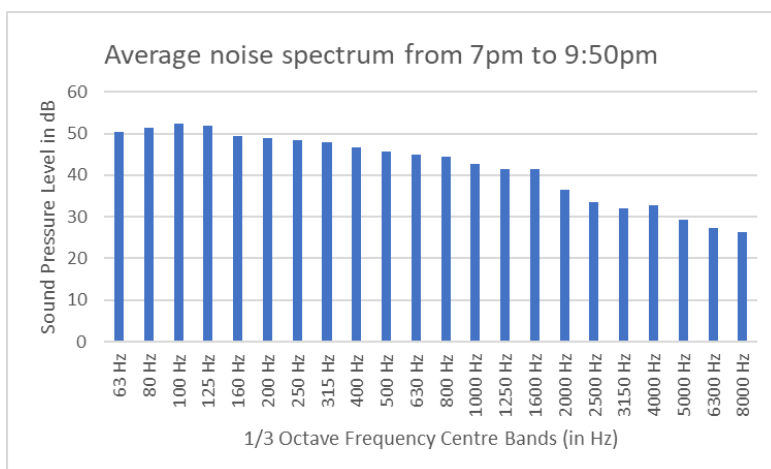


Figure 2 : Sound spectrum at MP1 on 28/4/2023 as evening average





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

3.1.2 The instrumentation used was a Svan 958A, type 1 sound level (SN: 34551) with a preamplifier SV12L (SN: 33541) and microphone 7052E (SN:74075).

3.1.3 The location is shown in Figure 3 below. The relative location is shown in the site plan in Figure 6, with MP2 shown in Figure 4.



Figure 3: MP1 location



Figure 4: MP2 location





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

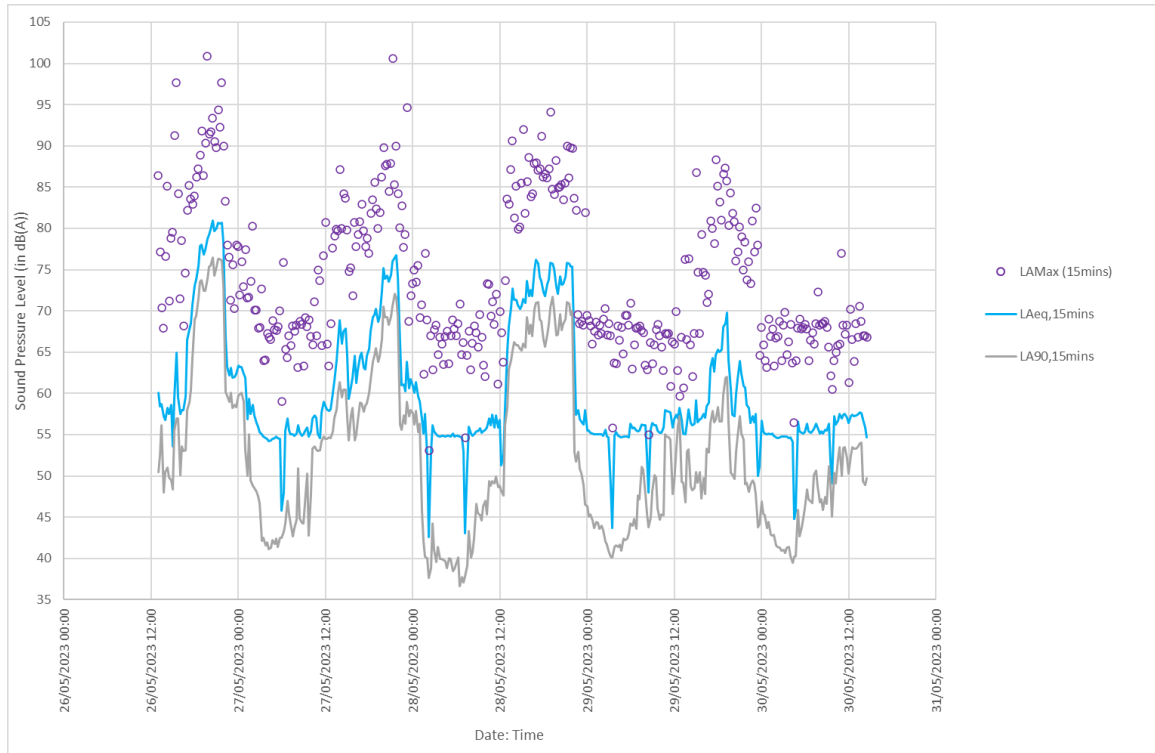


Figure 5: Noise levels at MP2 over the Bank Holiday weekend of the 26<sup>th</sup> to 30<sup>th</sup> May 2023



Figure 6: Site Plan with Adam and Eve used external areas shown by red area, with MP1 in yellow and MP2 in purple and residential in green



3.1.4 The summary of measured results is shown in Table 1:

MP1 (nearest residents)	After 7 - 10pm L <sub>Aeq,15min</sub> range	After 7 - 10pm L <sub>Aeq,15min</sub> average	L <sub>AMax</sub> Typical range and modal value
Friday 28/4/23	48 – 63 dB(A)	52.5dB (A)	52 – 78dB(A) modal = 57dB(A)

Table 1: Measured Results – External area noise from Adam and Eve over evening of 28/4/2023

MP2 (above external area)	After 7 - 10pm L <sub>Aeq,15min</sub> range	After 7 - 10pm L <sub>Aeq,15min</sub> average	L <sub>AMax</sub> Typical range and modal value
Friday 26/5/23	75 – 83dB(A)	79.6dB(A)	80 – 101dB(A) modal = 87dB(A)
Saturday 27/5/23	66 – 81dB(A)	74.3dB(A)	71 – 101dB(A) modal = 80 dB(A)
Sunday 28/5/23	69 – 78dB(A)	74.6dB(A)	76 – 90dB(A) modal = 81dB(A)
BH Monday 29/5/23	52 – 73dB(A)	63dB(A)	

Table 2: MP2 Measured Results – External area noise from Adam and Eve over period 26-31/5/23

MP2 (above external area)	After 7 - 10pm L <sub>Aeq,15min</sub> average
Friday 28/4/23	52.5dB(A) measured*
Friday 26/5/23	53dB(A) *corrected estimate
Saturday 27/5/23	47dB(A) *corrected estimate
Sunday 28/5/23	48dB(A) *corrected estimate
BH Monday 29/5/23	36dB(A) *corrected estimate

Table 2: MP2 Measured Results corrected for MP1 position based on -27dB(A)



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

- 3.1.5 The distance from the monitoring position MP1 to the nearest garden is only a few meters, so would represent well the noise levels being experienced (minus any screening provided by fencing). The measured noise levels were generally below 50dB(A)  $L_{Aeq,15min}$ , increasing after 7pm to an average of 53dB(A), with maximums typically as 57dB(A) during the daytime and early evening. Using the Friday measurements at MP1 as a reference for the Friday on the 26<sup>th</sup> May a correction from one position to the other can be made, which is 27dB(A), due to screening and distance. This can enable the noise incidence on residential to be estimated based on the real data of 4 further dates over a warm and dry bank holiday weekend. This shows a variation between 47 and 53 dB at the residential at the busiest times of the evenings with less than 50dB at other times generally.
- 3.1.6 The significance of the measured noise levels can be achieved by considering what a new development would be expected to achieve. BS 8233:2014 assists here, in that it suggests a average 16 hour upper target of 55dB(A) in gardens , and 35dB(A) in bedrooms during the daytime hours of 07:00 to 23:00hrs. The standard is intended for anonymous noise sources such as transportation, which is acknowledged in the case of people noise to be more attention grabbing when there are shouts and temporal changes. Where is it stable “babble” these targets are likely to be reasonable.
- 3.1.7 Allowing for a 12dB(A) reduction for a window ajar and worst-case of no further reduction for distance this indicates internal levels over the worst 3 hours (7pm to 10pm) would be 53dB – 12dB = 41dB  $L_{Aeq, 3 hours}$ . Assuming for the rest of the time levels are below 50dB(A) as an average this would reduce this overall 16-hour average to 40dB for windows open. With windows closed this would fall to 30dB or below. This is a positive indication that although the sound might be prominent in the evenings it is not enough to require the design of a new dwelling to require additional mitigation given the context and character of this inner-city area as an existing dwelling.

## 3.2 ACOUSTICS OF SEMI-ENCLOSED AREAS

- 3.2.1 Sound reflects off hard surfaces, causing it to build up. This is called reverberation. The sound will reflect until it loses its energy through interaction with air or other surfaces (‘absorption’).
- 3.2.2 Even though sound escapes through the open roof, of the external areas at the Public House the reverberation causes the sound to first build up in the reverberant semi-open external areas, which are quite large in volume.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

- 3.2.3 People's bodies absorb sound well; when a concert hall is empty of audience the reverberation is noticeably higher. This effect means that as the external spaces fill up the absorption also improves, so the worst condition of reverberance is when the space is relatively empty and people are located just below the open area and talking with high vocal effort to be heard above the reflected sound. The benefit will reduce the noise being emitted as a result of reflections, but the noise added by those persons must also be taken into account.
- 3.2.4 This effect which is driven by involuntary human behaviour in noisy environments is known as the Lombard Effect. It is one reason why people in noisy spaces raise their voices over time and end up feeling as if they need to shout to be heard over relatively short distances, as they complete to be heard as noise level rise.
- 3.2.5 In order to minimise this effect, it is sensible to add acoustic absorption to spaces that surround the sensitive central core, so that the noise levels remain lower for a relatively small number of people.
- 3.2.6 This means that reverting to a situation that would allow only small numbers of people into the open-air section of the external space would not help residents without treatment of the side areas, or allowing more people to fill them to provide absorption for free.
- 3.2.7 The sound levels measured by DO Acoustics in the external area as an average was 83dB(A). Normal vocal effort at 1m is 60dB(A). This raises to 80dB(A) for shouting. Two people speaking without competition from background noise might be expected to be 63dB(A) at 1m. Doubling this to 4 (assuming 8 people in total) would generate 66dB(A) and at this point any interference from other speech or the reverberation of the space would likely encourage a lifting of vocal effort which would increase the level by half (3dB) to approximately 70dB(A) with only 8 people. It can be seen how this escalation can continue. It would then take a doubling of people numbers to 16 when doubling again of vocal effort could be expected to take the total to 76dB(A). This would indicate that by the time there were 64 people outside the noise level could be expected to have reached the 83dB(A) measured, but by this stage the absorption of bodies would level out the increase. This would likely begin to occur for over 50 people.



### 3.3 RELEVANT GUIDANCE, CASE LAW & EXPECTATIONS OF LICENSING ACT

#### Statutory Nuisance & Nuisance relating to the Licensing Act concept

3.3.1 S79(1)(g) of the Environmental Protection Act 1990 (EPA) defines a statutory nuisance as “noise emitted from a premises so as to be prejudicial to health or a nuisance”. The term “nuisance” is not defined in the statute, but it has the same meaning as nuisance in common law. A duty is placed on the Local Authority to serve an abatement notice under S80 if it becomes satisfied that a statutory nuisance exists.

3.3.2 Case law assists in understanding this in more detail. In the Court of Appeal case *Barr and others v Biffa Waste Services Ltd* [2012] EWCA Civ 312 a clear and concise resume of nuisance law is given:

- Para 36 i: *“There is no absolute standard; it is a question of degree whether the interference is sufficiently serious to constitute a nuisance. That is to be decided by reference to all circumstances of the case.”*
- Para 36 ii: *“There must be a real interference with the comfort or convenience of living, according to the standards of the average man”.*
- Para 36 iii: *“The character of the neighbourhood area must be taken into account”.*
- Para 36 iv *“The duration of the interference is an element in assessing its actionability, but it is not a decisive factor; a temporary interference which is substantial will be an actionable nuisance”.*

3.3.3 In the words of Knight Bruce VC in the *Walter v Selfe* case of 1851 (4 De G&Sm 315, at p 322) *“...not merely according to elegant or dainty modes and habits of living, but according to the plain and sober and simple notions among the English people”.*

3.3.4 If the noise would cause material interference, and when considering the factors below, it may be possible to conclude that it is causing a nuisance:

- a) the level of the impact caused and how audible it;
- b) tonal characteristics of the sound;
- c) frequency of occurrence and any likely seasonal variation;
- d) the motive of those making the noise, and any wider benefit to society;
- e) the general background noise levels and character of the area;



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---

- f) is there a cumulative impact that might create a greater impact?
- g) the context in which the noise is heard.

3.3.5 A recent case ruling handed down by the Supreme Court is *Fearn v Tate (2023) UKSC 4*, which potentially raises serious questions about how much regard should be given to the impact on the person using the property, but rather focuses on the tort to land (harm to its use and enjoyment of it) caused to the ability to use the property and the root cause of what might be described as a nuisance.

3.3.6 The implications and ramifications of this judgment on the tests described in 3.3.11 a) to g) are as yet not clearly understood, and a matter for legal submissions well beyond the area of expertise of this expert; however, the importance of considering the impact on the ability of an occupant to use their property as it was originally intended remains a core sentiment that the judgement supports.



## Nuisance & Prescription

- 3.3.7 The principle of prescription is established in case law<sup>i</sup>, which is relevant to this matter. In the Court of Appeal decision in *Coventry and Lawrence* in 2012 it was established that a resident coming to a nuisance which had been operating for many years (20 years in that case) provided the Appellants (a motor cross operator in that case) with a right by prescription to cause such nuisance.
- 3.3.8 This may have been challenged to some extent by the *Fearn v Tate* ruling, where it causes substantial harm to the use of the property, however, it remains one of the key pieces of recent case law when considering what a nuisance is in relation to a long established premises which has always used it outside area and where residents have lived with it.

## Nuisance & Character of the area

- 3.3.9 In *Halsey v Esso Petroleum Ltd* [1961] it was held that if a man lived in a town it is necessary that he should subject himself to the consequences of those operations of trade which may be carried out in his immediate locality, which are actually necessary for trade and commerce, and also for the enjoyment and the benefit of the inhabitants of the town and of the public at large.
- 3.3.10 This is relevant because the Defendant moving to a residential area surrounding an established premises should have taken that into account when choosing to live there.

## The BPM Defence

- 3.3.11 A defence is available under S82(9): “it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance” provided the Appellant satisfies S82(10) condition under S79(1)(g) and the nuisance arises from an industrial, trade or business premises.
- 3.3.12 In Section 79 of the Environmental Protection Act 1990 “best practicable means” is to be interpreted by reference to the following provisions:
- *“practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;*

---

<sup>i</sup> *Coventry and Lawrence* [2012] EWCA Civ 26 and *Sturges and Bridgman* [1879] 11 Ch.D. 852



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

*the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;*

*the test is to apply only so far as compatible with any duty imposed by law;*

*the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;*

3.3.13 In my experience, in order to reach the threshold required by this defence it is necessary to prove that nothing more can reasonably and practicably be done to reduce the impacts of the noise which may be constituted as a nuisance.

3.3.14 I understand the defence relates to statutory nuisance only and is not a defence to common law nuisance<sup>ii</sup>. Thus, the defence is specific to the Environmental Protection Act 1990, which is the Act under which the Noise Abatement Notice could be served. It does however serve well to indicate what might be considered as a bar to demonstrate that a premises is promoting the licensing objectives in relation to the Licensing Act. That is to say, doing everything possible to minimise disturbance of residents by noise so that it does not cause a public nuisance.

3.3.15 Whilst the latter may be a less onerous demand than showing nothing further can be done, there is virtue in setting a path that enables both to be achieved, as noise control requires iterative steps to establish when the next step is not practicable to do for the benefit that would be achieved.

## 3.4 RESPONDENTS

### General comments

3.4.1 Hackney licensing have brought the Review, citing in the papers a number of specific dates when it is alleged that public nuisance was caused, including :

*“Sat, 30 Jul 2022, 7pm Noise ended: Ongoing at Sat, 30 Jul 2022, 10:03pm Noise started: Wed, 10 Aug 2022, 7pm Noise ended: Ongoing at Wed, 10 Aug 2022, 8:01pm Noise started: Fri, 19 Aug 2022,*

---

<sup>ii</sup> See for example *Halsey v Esso Petroleum Co. Ltd 1961*, *Vanderpant v Mayfair Hotel Co. Ltd. [1930]* and *Andreae v Selfridge 1937*





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

*8:45pm Noise ended: Ongoing at Fri, 19 Aug 2022, 8:59pm Noise started: Sat, 18 Feb 2023, 9pm Noise ended: Ongoing at Sat, 18 Feb 2023, 9:47pm”*

3.4.2 There is no objective or technical evidence that these occurrences were ever investigated or that they were justified as having been a nuisance. It is not enough evidentially to justify a complaint against such a high bar by having an “on” time that noise started and then “stopped”. Evidence of the material interference caused is needed and how the ordinary use of the property was not possible. None of this evidence has been made available to the Sub-committee and I would urge caution on concluding that a Public Nuisance may be proven, based on the simple act of a complaint being received, which was not investigated as the EPA duty requires that it is.

3.4.3 What is requested of the Sub-committee is the following, which entirely aligns with the recommendations of DO Acoustics, whose recommendations were rejected by the Sub-committee:

*“This review application therefore seeks to modify the licence to amend the annexed plan and attached the following conditions: -The external areas shall be regularly monitored by staff/door staff when in use -Email address and phone number will continue to be available to local residents to discuss any issues -Use of any external areas will cease at 22:00 -After this time there will be a maximum of 8 smokers outside the front of the premises (and they shall not be permitted drinks with them) -No TVs shall be used in any external areas”.*

3.4.5 In large part this seems to have been accepted into the normal operations of the premises, according to my observations and investigation.

### Representation 1 – Coopersale Road Resident

3.4.6 The resident suggest they have complained about the noise from the pub “continually”, since July 2022. It is not clear where those complaints are as no other complaints history has been provided by LBHEP. This has been requested, and whilst it remains illusive, the suggestion that they were investigated, as would be their duty to do so, seems unlikely. Only four occasions were specifically referenced over August 2022 and February 2023 in total, with emails sent to the licensing department, which have not been disclosed to enable my technical scrutiny to go any further.

3.2.17 The resident suggests the “*structure built around the outdoor area*” (assumed to refer to the timber screen) does not reduce the sound. I would agree with this, for the reasons stated previously. It must



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

not be misunderstood that this supposes that all of the other measures have not resulted in an improvement even if this quite visual one may not apparently have if you are a resident looking into the rear of the external areas. The evidence is that an objective improvement has been achieved by the other noise mitigation measures.

- 3.2.18 The resident suggested that their “sense of wellbeing” was being affected. This is a long way from a nuisance being caused, which must be extreme and substantial in its nature in how it affects the way the property can be used, not simply the individual’s sense of wellbeing.

### Representation 2 – Glyn Road Resident

- 3.2.19 A longer written submission has been made by this resident, inferring long-standing complaints and significant public nuisance, without technical evidence to justify the assertions.
- 3.2.20 This is described as relating to “*significant noise disturbance throughout the week*”. It is said to be every day of the week, but particularly problematic on Thursdays, Fridays, Saturdays and Sundays.
- 3.2.21 The submission relates specifically to “*noise from drinkers using the outdoor space travels directly into the residential homes in these street*”. It is described as a frequent disturbance during late spring, summer and autumn months, suggesting it is when windows are open and the garden is in its maximal operational peaks only. The noise is described as being “clearly audible in our house even when all our doors and windows are shut”. This is unlikely, given the factual evidence of DO Acoustics, who had access to No.1 Glyn Road and concluded noise from use of the external areas was not audible before the mitigation works were completed. The impact has since been shown to have reduced further.
- 3.2.22 The resident suggests that “*at night the noise is clearly audible in our family bedrooms and interrupts our children’s bedtime*”. Given that technically night-time is defined as after 11pm hours and the external areas are closed after 10pm this is technically unlikely to be based on the true definition of night. It is perhaps meant to be indicating that during the evening this impact occurs. It is problematic to expect conditions for all surrounding residents to be achieved at these times, as noise from other source in the area continues during this period and is part of the character of the area. The alternative is to expect the High Street and everything associated to also close down to achieve these conditions by mid-evening, which is clearly unreasonable. It is clear that some further reduction of impacts



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

would be valued by this resident, who may be the person who spoke to DO Acoustics about a concern regarding children being able to sleep, but would not provide access to allow noise assessments to take place.

3.2.23 The resident says the “*problem noise*” has been reported to Hackney noise pollution control team, who have “*acknowledged and agreed with the problem but, to date, have been unable to do anything to control it.*” This is not the case as the EPA provides a duty to take formal action where it has the evidence to support it.

3.3.24 The resident says that noise in their gardens during the day “prevents us from using the garden”. Recent noise monitoring does not support that suggestion, given the noise from other sources in the area and the character of the area in which use of the external areas in some capacity has occurred for way before 2018.

### Representative 3 – Unknown address

3.3.25 With no address provided, and no indication that they live in the vicinity and little in the way of a representation, this is no clear evidence of any sort on which an objection could be based. This appears to be a broad statement made by someone unlikely to live in the area, and should be given little weight accordingly.

3.3.26 The only point made is that over the previous 8 years of apparent “*disregard for neighbours*” who have been affected by a “*constant unbearable noise*” has been shown, yet the noise is not described or the regularity evidenced. Based on this information it is not made clear what the noise is, and whether the person has actually witnessed it themselves or not.

### Representative 4 – Environmental Protect Team

3.3.27 The LBHEP team provide a short representation saying that 5 complaints have been received between Jan 2022 and July 2022. They go on to say that the mitigation carried out appear not to have stopped the complaints, and that they would be satisfied with the proposed licence conditions on the review application.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---

3.3.28 They do not suggest that any of the complaints were investigated and found to be justified, which is their duty under the EPA, so the weight of the receipt of complaints being sufficient to infer a nuisance was being caused should be given caution in light of this.



## 4 OPINIONS

4.0.1 My opinions on the key areas of my instructions are set out in the following sections.

### 4.1 Nuisance

4.1.1 The evidence, when taken as a whole, would need to demonstrate that noise from people affects residents when within their gardens or properties so that it constitutes a serious or substantial interference with its use to be a nuisance. It would need to be more than one or two people affected, but a number of people in their gardens and in their homes for a public nuisance to exist. This assertion is based largely on the fact that in the more clement times of year residents can hear noise from the external areas of the Premises in their gardens and inside their homes, even sometimes they report with the windows closed.

4.1.2 It is not enough to hear and be disturbed and annoyed by this type of noise for it to cause a nuisance, but there must be evidence that the impact being so serious and substantial that it materially interferes with the ordinary use of the property. It is not sufficient to affect well-being on its own, or to be annoying in the garden. Based on the descriptions given, and the objective evidence available from the DO Acoustics investigation, and my own recent investigations, it is very unlikely in my opinion that the impact is sufficient to amount to a nuisance.

4.1.3 This position is supported by LBHEP being aware of the complaints but confirming that a Statutory Nuisance has not been established. As it is their duty under the EPA they are obliged to investigate and serve a NAN if a nuisance exists, which they have not. This indicates that the complaints have not be verified and that there is no evidence that a nuisance exists, in the view of the council's own professional officers.

4.1.4 My opinion is supported by a drop from 10 representations at the last application relating to this external area to only one or two that are likely to live in the vicinity. This does not support that a sufficient number of the many surrounding properties agree with the basis of the review. It can not therefore be considered a public nuisance.

### 4.2 Visual Inspection

4.2.1 My inspection reveal that a lot of noise mitigation work has already been completed following the failed application, despite the inferences of the Sub-committee.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

4.2.2 It is my opinion that music and other noise break-out from inside the Premises is being adequately controlled, with the continuing need to focus on the management of doors when there is music to make sure the noise does not break-out and impact upon residents. The acoustic limiter required by existing conditions of the licence was working and is effective in my opinion for the upper levels that were trialled during my visit.

### 4.3 Objective Monitoring

4.3.1 Having completed a reasonable monitoring period of noise levels from the external area over 5 typical days of warm weather use the sound emitting to the boundary with the nearest residents during daytime and the evening has now been thoroughly quantified objective and is available as evidence. This supports the fact that noise levels have reduced by typically 6dB from the survey levels measured by DO Acoustic in 2022. It is my opinion this is largely in-line with the expected improvements that have been made, in-line with the recommendations, resulting in a reduced impact on residents.

4.3.2 The residual impact is due to noise breakout from the top of the open external courtyard area, which cannot be enclosed for smoking reasons, is low enough to allow a new home to be built without additional mitigation, considering the character and context of the area.

### 4.4 Representations

4.5.1 LBHEP have made a submission, but it appears from that they not to have validated or investigated any of the complaints they have received.

4.5.2 LBHEP were approached with a request to share any complaints history for the site by PR. Responses were received on the 31<sup>st</sup> May 2023 from Gurch Patti and also Ashraful Haque referring the Mr Patti's response. Mr Patti in turn referred to the submission, adding that:

*"For informational purposes Environmental Protection added complaints prior to the ones mentioned by Mr Tuitt in the review application. I can confirm at this stage no statutory noise nuisance has been witnessed under section 80 Environmental Protection Act 1990 but the service does continue to receive complaints. Since the representation below (19/4/23) Environmental Protection has received the following complaint:*

*13th May 2023: Noise started at 7pm and ongoing 9:55pm - alleged loud crowd noise from pub, unacceptable in a residential area. Clearly audible throughout the house - kitchen, bathroom,*



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

*bedrooms - despite all windows and doors being closed and triple glazing. Disturbs activity in the house. Makes the garden unpleasant to use.*

*Environmental Protection contacted the complainant to arrange a visit inside their home on 13th May 2023 at 22:40 but the complainant stated the noise had stopped at 10pm.”*

- 4.5.2 In my opinion very little weight should be attributed to the representations of LBHEP, whom have not substantiated complaints. To infer that the complaints are justified on the basis of this representation would be unsafe to rely on, in my opinion. Assuming they have not failed in their duty to investigate the complaints, they have confirmed that no nuisance exists. This is confirmed by Mr Gurch Patti in his latest email. This is of material important for the Sub-committee to take account of, in my opinion. If they have failed to do their duty, then they would be open to be referred to the Local Government Ombudsman.
- 4.5.3 It is noted that this response confirmed that complaints have not been validated, and that in the example given the complaint was made just 5 minutes before the external area closed, and shows that the control of impact by times of use is being effective.
- 4.5.4 The numbers of the other representations speak for themselves and are of very low numbers, and it is very difficult in my opinion for two complaints that have not been verified by LBHEP or supported with objective evidence to be a credible basis of public nuisance being proven to be occurring or likely to continue to occur. Therefore, in my opinion, the licensing objective cannot have been proven to have been failed in terms of preventing public nuisance, especially in light of the continuing effort to mitigate the impact caused for an activity which has been occurring at a smaller scale long before 2018. Applying the “live and let live” approach that is embedded in the concept of nuisance would indicate that the residents need to accept some degree of disturbance associated with an established pub of which an external area has always been a part of the noise climate and so the character of the area. The evidence in the submissions suggests that they are now largely talking about a historic impact, rather than a real one that continues to occurs “continually” as they infer. The latest complaint on the 13<sup>th</sup> May was addressed by time limiting the impact caused to that resident as the proactive prevention measure.
- 4.5.5 For the reasons stated previously there is no technical evidence which supports the grounds for the Review, and in my opinion, it should be rejected.



## 5.3 NOISE CONTROL MEASURES

- 5.3.1 Previous acoustics advice, provided by an independent acoustician (DO Acoustics), was given. LBHEP was involved in the site meeting to discuss the advice. The Sub-committee were not confident that it would be sufficient. The evidence of my own investigation indicates that the sound leakage out of the sides of the premises has reduced by 6dB(A), in line with what was predicted. There is evidence supporting that an improvement was achieved, but this could not reduce the noise escaping from the open area of the courtyard without further works that is a part of a noise control approach. The following recommendations are made with a further overall improvement target of 6dB(A) affecting this path to residential gardens and internal rooms, which is a noticeable improvement.
- 5.3.2 The baseline condition, which would have been experienced by residents over very many years prior to 2018, was the use of the current open-air courtyard. This baseline means that some level of noise from people has been accepted as part of that use. For up to 50 people levels of 80dB(A) in the external areas would not be unexpected. During a normal night DO Acoustics measured 83.3dB(A), which is comparable, and shows that the additional numbers in the other external areas (bottling and covered areas) is not the main issue when there are enough people to absorb sound. The focus should therefore be to keep the sound inside the space and absorb it. A number of noise mitigation measures have been recommended, and some completed, including:
- i. Step 1 is supported by Observation e) as the primary mitigation step, which would be to treat the under-croft areas with acoustic absorption, rather than limit numbers of people, which in themselves provide absorption when those areas are filled.
  - ii. Step 2 is to improve the high-level screenings to minimise the sound escaping to environment with the proposals if observation f).
- 5.3.3 Completing those two steps is likely to reduce to overall noise experienced for all conditions in which people use the external area, and for the worst-case condition of 10 to 50 people when the reverberation will encourage the Lombard Effect to cause people to raise their vocal effort unconsciously.
- iii. Step 3 would be focused on improving management of the external area, and management of the doors to inside the establishment (see observation c) and d)). It would be sensible to





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

include this within an updated Noise Management Plan, which could be based on what was previously proposed by Do acoustics, with some amendments as proposed in Appendix A.

- 5.3.4 These measures must be taken as a whole to achieve the best overall improvement for residents, and would satisfy the requirements of the Licensing objective to proactively prevent public nuisance. It would also provide best practicable means (BPM), in my opinion.

## 6 CONCLUSIONS

- 6.0.1 Based on the evidence available to me, it is my opinion that the review has not been brought on the basis of any technical evidence, but on the strength of complaints of two people living in the vicinity of the Premises. There is no objective evidence or evidence validated by LHBEP officers that a nuisance exists or is likely to recur, and assuming LBHEP have acted in accordance with their duty under the not validated or acted upon their duties, which they would have to in law if such a nuisance existed.
- 6.0.2 The weight of the evidence also indicates that in the worst case two people are affected, and this is not sufficient to indicate that a public nuisance could exist under its common law meaning.
- 6.0.3 It can be concluded therefore that the ongoing efforts of the Premises have reduce the impacts from 10 representations to 2 with one possible political representation from someone not living in the vicinity of the Premises.
- 6.0.4 In addition, a recent Supreme Court case emphasises that the Ordinary Use of a person's property must be extremely or substantially affected, rather than a person's wellbeing or their reasonable expectations. This important distinction, when considering the character of the area and the context of the established use of the public house having an outside area for many years, leads me to conclude that the ordinary use of their homes has not be degraded materially, as it has been suggested by them.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : **LBH-PRE-T-0056**

---

6.0.5 Further noise mitigation has been proposed, which is anticipated to further reduce the impact on residents and enable the whole of the current external area (except for the side area) to be used.

6.0.6 It is also proposed that, together with the redrafted noise management plan (as set out in Appendix 1), this would promote the licensing objective regarding public nuisance and continue to prevent it. The plan proposed could be conditioned, rather than each condition being listed. It is proposed that the drafted conditions capture the basis which would align with the ongoing direction of travel set out by the noise control works proposed.

## 7 FURTHER WORKS

7.0.1 Two phases of additional noise control work is proposed as an ongoing part to deliver the licensing objective in relation to prevention of public nuisance:

- Step 1 - treat the under-croft areas with acoustic absorption, rather than limit the numbers of people, which in themselves provide absorption when those areas are filled.
- Step 2 is to improve the high-level screenings to minimise the sound escaping to environment with the addition of angled absorptive faces. This will require review if the structural capacity of the existing structure to see if that is practicable.

7.0.2 Review and adopt an updated Noise Management Pan

7.0.3 Complete further acoustic assessment post works, including access to residents' properties (which has been difficult to arrange) and which would provide a basis for greater certainty for confirming the improvements made objectively and refining management solutions that make a real difference. It is encouraged that residents co-operate moving forward to make this possible.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

## 8 EXPERT'S DECLARATION

I **Peter James Rogers** DECLARE THAT:

- 8.0.1 I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
- 8.0.2 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- 8.0.3 I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
- 8.0.4 I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
- 8.0.5 I will advise the party by whom I am instructed if, between the date of my report and a court case, there is any change in circumstances which affect my answers to points in Section 4 Opinions and Section 5 Conclusions above.
- 8.0.6 I have shown the sources of all information I have used.
- 8.0.7 I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
- 8.0.8 I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
- 8.0.9 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
- 8.0.10 I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
- 8.0.11 I understand that;
- i. my report will form the evidence to be given under oath or affirmation;
  - ii. questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;




Report of : Peter Rogers  
 Specialist Field : Acoustics  
 On : Adam & Eve PH  
 Instructed by : Niall Forde, Licensing Con.  
 SAL Reference : 23-0063-0 R01 PR  
 Licence No. : **LBH-PRE-T-0056**

- iii. the court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties;
- iv. the court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing;
- v. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
- vi. I am likely to be the subject of public adverse criticism by the judge/ magistrates if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.

8.0.12 I have read Part 35 of the Civil Procedure Rules and the accompanying practice direction and I have complied with their requirements.

8.0.13 I have read the “Protocol for Instruction of Experts to give Evidence in Civil Claims” and confirm that my report has been prepared in accordance with its requirements. I have acted in accordance with the Code of Practice for Experts.

**STATEMENT OF TRUTH** I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signature.......... Date.....2-6-23.....



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---

## GLOSSARY

### Acoustic Terminology



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
Licence No. : LBH-PRE-T-0056

---

**The decibel (dB):** the decibel is a logarithmic unit used to describe the sound pressure level of sound (or noise). The usual range is 0 (threshold of hearing) up to 140dB (threshold of pain), with the reference used as  $P_0$  as  $2 \times 10^{-5}$  Pascals.

**Hertz(Hz) :** frequency is measured in cycles per second (or hertz). Larger frequencies can be also noted as kilo-hertz (kHz), so 1000Hz = 1kHz. The normal range of hearing is 20Hz to 20kHz. The range of speech is 500Hz to 8kHz. The area of interest for bass music is the 63Hz to 125Hz region.

**$L_{Aeq, T}$ :** the A-weighted sound pressure level relative to a reference of  $2 \times 10^{-5}$  Pascals that is the equivalent continuous level, which is energy average over a period T. The descriptor is often 'A-weighted' to take account of the typical response of the human ear to different frequencies (denoted  $L_{Aeq, T}$ ).

**$L_{Amax}$ :** the maximum A-weighted sound level that was recorded during the measurement time period.

**$L_{Cpeak}$ :** the peak rms sound pressure level, expressed as decibels relative to a reference of  $2 \times 10^{-5}$  Pascals and C-weighted

**Noise or sound:** acoustic energy in an indoor space or an external environment is perceived as sound. 'Noise' is often defined as unwanted sound. In the absence of a more specific description, 'sound' is therefore implicitly benign or wanted.

## Sound Insulation

When specifying the level of sound insulation required for a given building element the following descriptors may be used:

**$R_w$ :** the 'weighted sound reduction index'. This represents the level of sound reduction measured in a laboratory for a given building element. The w denotes 'weighting' and takes account of the deviations in sound reduction at a range of frequency bands when compared with a reference curve to determine the single figure value. Note this does not represent the in-situ performance of an installed element. Manufacturers should quote the  $R_w$  performance for their products.

**$D_{nTw}$ :** This is the 'standardised level difference' and is a way to represent the sound insulation provided by a separating construction under real conditions, such as a wall or floor. The 'D' denotes the sound level difference measured across the installed construction and is normalised 'n' to take account of the receiving room properties in which it was measured, and weighted 'w' by comparing the level difference across a range of frequency bands and comparing with a standard reference curve to provide a single figure value. This is the



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---

standard measurement parameter for sound insulation measurements, which are used in relation to Building Regulations

$C_{tr}$ : This is the correction factor (usually a negative value) which uses a standard road traffic noise spectrum, and so has a bias towards low frequency. For a typical brickwork construction the  $C_{tr}$  is low (-3 to 5) whereas a light weight partition can have a much higher values (e.g. -8 to 15). The lower the number the better the construction resists bass frequencies of sound. This parameter is then subtracted from the  $D_{nTw}$  value to provide an overall single figure sound insulation result appropriate for residential.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Adam & Eve PH  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**Licence No. : LBH-PRE-T-0056**

---





Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Night & Day Café S80 Appeal  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**MCC Reference : LBH-PRE-T-0056**

---

## APPENDIX 1 NOISE MANAGEMENT PLAN



## **Proposed operating schedule measures to promote the prevention of public nuisance**

1. Noise from amplified music or voices shall not be such as to cause a noise nuisance to occupants of nearby premises.
2. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a noise nuisance.
3. There shall be no TVs used in the outside external space, or loudspeakers transmitting what is being shown on screens inside to the external areas.
4. The external door to the kitchen shall remain closed at all times, except for access and egress by staff when necessary.
5. The premises licence holder shall invite nearby residents to a meeting at the premises to discuss any concerns at least once a quarter (or more frequently if requested to do so by any resident).
6. (completed – no longer needed)
7. Acoustic seals or the replacement of the fire exit door with a new acoustic door set, rated to be at least  $R_w$  35dB as a set, to be fitted correctly and maintained with acoustic compression seals to head, jamb and thresholds such that a good seal is achieved when closed.
8. Notices will be positioned in the outdoor areas requesting customers to keep noise to a minimum and members of staff are to draw customers' attention to these notices if they feel they are not taking notice of them.
9. Movable furniture placed on the terraces shall be fitted with rubber, cork or similar material on their feet/ base to minimise noise when moved.
10. The outside area shall be monitored by management or door staff (when employed) regularly when it is in use.
11. Patrons who disregard the signage and verbal instructions regarding noise will be asked to move inside and/ or leave the premises.
12. The fire exit to the alleyway shall remain closed whilst the courtyard garden is in use except in case of emergency.
13. At the end of the evening management and staff will assist with the orderly and gradual dispersal of patrons.
14. Staff members (including door personnel when employed) will advise patrons to leave the courtyard garden quickly and quietly out of respect for the neighbours.



Report of : Peter Rogers  
Specialist Field : Acoustics  
On : Night & Day Café S80 Appeal  
Instructed by : Niall Forde, Licensing Con.  
SAL Reference : 23-0063-0 R01 PR  
**MCC Reference : LBH-PRE-T-0056**

---

15. Notices will be displayed at the exits requesting our customers to leave quietly and in an orderly manner out of consideration to neighbours and their attention will be drawn to these notices by members of staff.

16. The manager and licensee shall provide an email address(es) and phone number(s) to local residents so that they may report and resolve where possible any issues relating to noise that may arise with the member of the management team.

17. Following the receiving of a complaint, the licensee and management shall investigate the complaint and take appropriate action where necessary, keeping appropriate records of the action taken, which should be made available on request by a Responsible Authority within a reasonable timeframe. Where substantiated by an authorised officer they shall work with London Borough of Hackney's Licensing and Environmental Protection Team to promote the prevention of public nuisance.

18. Doors and windows at the premises are to remain closed after 10pm save for access and egress.

19. There shall be a written dispersal policy and smoking policy for the premises, which is shared with the Responsible Authorities, a copy of which shall be kept on the premises and made available upon request any such Responsible Authority.