



Supplementary 3 Alcohol and Entertainment Licensing Sub-Committee (C)

Monday 20 June 2016 at 10.00 am
Training Suite - 1st Floor, Brent Civic Centre,
Engineers Way, Wembley, HA9 0FJ

Membership:

Members

Councillors:

Long (Chair)
Hylton
McLeish

Substitute Members

Councillors:

Bradley, Chohan, Harrison,
Hector, Naheerathan and
Shahzad

For further information contact: Joe Kwateng, Democratic Services Officer
(020) 8937 1354; joe.kwateng@brent.gov.uk

For electronic copies of minutes, reports and agendas, and to be alerted when the minutes of this meeting have been published visit:

democracy.brent.gov.uk

The press and public are welcome to attend this meeting

Agenda

Introductions, if appropriate.

Apologies for absence and clarification of alternate members

Item	Page
3 Application by O Castelo Ltd. to provide regulated entertainment and the supply of alcohol from 11:00hrs to 00:00hrs Sunday to Thursday and from 11:00hrs to 01:00hrs Friday & Saturday; to provide late night refreshment from 23:00hrs to 00:30hrs Sunday to Thursday and until 01:30hrs Friday & Saturday and to remain open from 09:00hrs to 00:30hrs Sunday to Thursday and from 09:00hrs to 01:30hrs Friday and Saturday at the premises known as O. Castelo (988-992 Harrow Road NW10 5NT) pursuant to the Licensing Act 2003.	1 - 10

Conduct of the Hearing:

The hearing shall proceed as follows:

- General introduction by the Regulatory Services Manager
- Case for the Responsible Authority – Police/Regulatory Services
- Questioning of the Responsible Authority by Applicant and Members
- Case for the Applicant
- Questioning of the Applicant by the Responsible Authority and Members
- Summing up by the Responsible Authority
- Summing up by the Applicant

Members' Deliberation

The Chair will then ask the representatives of the Responsible Authority and the Applicant to leave the meeting room whilst the panel goes into close session to deliberate the application. The applicant and the representatives of the responsible authority will be recalled to the meeting room when the Sub-Committee has made its decision. The decision will be confirmed in writing to the applicant within 7 days



Please remember to switch your mobile phone to silent during the meeting.

- The meeting room is accessible by lift and seats will be provided for members of the public.



REGENERATION AND ENVIRONMENTAL
SERVICES

Regulatory Services
Brent Civic Centre, Engineers Way,
Wembley, Middlesex. HA9 0FJ

Tel: (020) 8937 5252
Direct Line 020-8937 5561
Fax: (020) 8937 5150
Email: regulation@brent.gov.uk

Web: www.brent.gov.uk
Date: 15/06/2016

Anderson Ferreira
O Castelo
988-992 Harrow Road
London
NW10 5NT

Your Ref:
Our Ref: SR/03680/06
Contact: Martin Wood

Dear Mr Ferreira,

**O Castelo, 988-992 Harrow Road, London, NW10 5NT
Environmental Protection Act 1990
Licensing Act 2003**

I write to confirm my visit on the evening of Friday 10 June 2016, and to outline the Nuisance Control Team's concerns that this premises is inadequately sound-proofed to contain loud live amplified music without causing public nuisance. You will be aware of the Licensing Committee hearing that is scheduled to be held on **Monday 20 June 2016 at 10am**. I will be including this letter and the attachments to this letter as part of my representation.

On Friday 10 June 2016, I attended the premises by prior agreement in order to help you set a suitable sound level from live music. You had two performers singing and playing semi-acoustic guitar. In the nearest noise sensitive residential premises the music was audible but was not at a level that I would consider to be a statutory noise nuisance, at that time. When I spoke to you about this you advised your performers always play music at that volume. You then told me that the musicians that play on Saturday evenings use an amplified organ as part of their performance. The residents that I met on that evening all conveyed their opinion that the music was being played at a purposefully low volume. One resident pointed out that the amplified organ that usually plays on Saturday evenings plays with loud amplified drum loops. The Council's Nuisance Control Team are concerned that a Premises Licence endorsed with Live Music at this venue will result in further complaints of noise from the performance of those acts.

I believe you took control of this business in mid-February of this year. I am providing an outline of our recent records of noise complaints since that period:

Friday 19 February 2016. Complaint received at 23:30hrs alleging loud music playing

Saturday 05 March 2016. Complaint received at 00:36hrs alleging very loud music.

Friday 13 May 2016. Complaint received at 22:21hrs and at 23:54hrs of very noisy live music. The caller stated the close proximity causes great disturbance and added that it was quiet for a few weeks but is now unacceptable. An Officer from the Nuisance Control Team attended the complainant's home between 00:12 - 00:30hrs (14th May 2016) and witnessed a statutory noise nuisance. A copy of the noise abatement notice that was served on 22 May 2016, with covering letters, is enclosed with this correspondence.



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I am also including a copy of a letter dated 15 May 2015, addressed to the previous business proprietor. This is included to show that the Nuisance Control Team have tried to work closely with the previous business operator in an advisory capacity. In particular the final paragraph on the front of the letter details a previous unsuccessful attempt to set a suitable sound level due to very poor sound insulation. I believe the previous business proprietor undertook some sound insulating work himself, but we did not receive any details or any certification showing that such works were undertaken to a professional standard.

Our advice remains that if you wish to provide loud live amplified music for your customers you must provide a level sound insulation that can contain the volume of music you wish to provide. The advice given in the letter to the previous business proprietor remains valid.

We are able to continue working with you in an advisory capacity, but the fact that a noise abatement notice has been served upon you means we may also have to act in our enforcement role if further complaints show amplified music plays at such a level as to constitute a nuisance within the meaning of the law.

Yours sincerely,

Martin Wood
Enforcement Officer
Regeneration and Environmental Services



Enclosures:

Copy of Noise Abatement Notice and Covering Letters dated 22 May 2016
Copy of letter to Mr Nuno Cabral (previous business proprietor) dated 15 May 2015

Copies:

Copies of this letter will be sent to Business Licensing and any Interested Parties making representation against your application for Premises Licence.



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LONDON BOROUGH OF BRENT

Environmental Protection Act 1990

Section 80

Abatement notice in respect of statutory nuisance

O Castelo Limited

988 - 992 Harrow Road
London
NW10 5NT

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the Council of the London Borough of Brent being satisfied of the occurrence of noise amounting to a statutory nuisance under section 79(1)(g) of that Act at: **residential properties in Greyhound Road, London, NW10.**

within the district of the said Council arising from the playing of loud amplified music and speech at the premises know as **O Castelo 988 -992 Harrow Road, London, NW10 5NT** at such a level that nuisance was caused in neighbouring properties.

HEREBY REQUIRE YOU as the person responsible for the said nuisance **FORTHWITH** from the service of this notice, to abate the same and also **HEREBY PROHIBIT** the recurrence of the said nuisance and for that purpose require you to:

*Cease or cause to cease the playing of loud amplified music and speech by yourself or others on the premises known as **O Castelo 988 -992 Harrow Road, London, NW10 5NT** at such a level so that noise nuisance is not caused in any residential or noise sensitive premises.*

THIS is a notice to which paragraph (2) of regulation 3 of the Statutory Nuisance (Appeals) Regulations 1995 applies and, in consequence, in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of any offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the Standard Scale (currently £5,000), together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

Dated: **22nd May 2016**

Signed:

Mr Rockwell Charles
Enforcement & Environmental Health Officer
Authorised Officer

Regulatory Services, Brent Civic Centre, Engineers Way, Wembley HA9 0JF
Tel: 0208 937 6458, Fax: 0208 937 5150, Email: environmentandprotection@brent.gov.uk

Ref: EH/06/3680/RC

NB The person served with this notice may appeal against the notice to Brent Magistrates' Court, 448 High Road, London NW10 2DZ within twenty-one days

beginning with the date of service of the notice (see notes on reverse).

The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:-

APPEALS UNDER SECTION 80 (3) of the ENVIRONMENTAL PROTECTION ACT 1990
("the 1990 Act")

(1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act to Brent Magistrates Court, 448 High Road, London NW10 2DZ against an abatement notice served upon him by Brent Council.

(2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that

are appropriate in the circumstances of the particular case-

(a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);

(b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);

(c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonably in character or extent, or are unnecessary;

(d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;

(e) where the nuisance to which the notice relates -

(i) is a nuisance falling within section 79(1)(a), (d), (e), (f) or (g) of the 1990 Act and arises on industrial, trade or business premises, or(ii) is a nuisance falling within section 79(1)(b), of the 1990 Act and the smoke is emitted from a chimney, or

(iii) is a nuisance falling within section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;

(f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -

(i) any notice served under section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises), or

(ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or

(iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);

(g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993

(loudspeakers in streets or roads);

(h) that the abatement notice should have been served on some person instead of the appellant, being -

(i) the person responsible for the nuisance, or

(ii) the person responsible for the vehicle, machinery or equipment, or

(iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or

(iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;

(i) that the abatement notice might lawfully have been served on some person instead of the appellant being -

in the case where the appellant is the owner of the premises, the occupier of the premises; or in the case where the appellant is the occupier of the premises, the owner of the premises,

and that it would have been equitable for it to have been so served;

(j) that the abatement notice might lawfully have been served on some person in addition to the



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Environment and Protection
Brent Civic Centre, Engineers Way,
Wembley, Middlesex. HA9 0FJ

Tel: (020) 8937 5252
Direct Line: 0208 937 6458
Fax: (020) 8937 5150
Email: environmentandprotection@brent.gov.uk
Web: www.brent.gov.uk/eh
Date: 22/05/2016

Mr Anderson Ferreira
O Castelo Limited
988 -992 Harrow Road
London
NW10 5NT

Our Ref: SR/03680/06
Contact: Rockwell Charles

Dear **Mr A Ferreira**,

RE: Noise Disturbance from O Castelo 988-992 O Castelo 988-992 Harrow Road, London NW10 5NT Harrow Road, London NW10 5NT.

I write to confirm my visit to your premises on the **14th May 2016** at **00.50hrs**. You were informed that a noise disturbance had occurred from your premises due to the playing of loud amplified live music. The music was intrusive enough to cause annoyance and inconvenience in neighbouring premises.

Under the terms of the above legislation you must not create or allow excessive noise that gives rise to a nuisance. On this occasion the Council intends to advise you that this incident will be recorded.

In cases where Council Enforcement Officers substantiate a statutory noise nuisance, they are normally required to serve an abatement notice under section 80 of the Environmental Protection Act 1990, to prohibit the recurrence of the nuisance. You should be aware that contravention of an abatement notice is an offence for which the Council can take legal proceedings. A successful prosecution can result in a limitless fine and a criminal record being imposed. In persistent cases the Council may also apply for a warrant to enter your premises to seize and remove any amplification equipment.

As the legal occupier of the premises, you are the person responsible for the cause of the disturbance and I strongly advise you to take steps to ensure that noise nuisance does not occur. If you ignore this warning, the Council may have to begin the enforcement process mentioned above. If you wish to discuss the above matter in detail, please do not hesitate to contact the Noise Duty Officer on the above number during normal office hours.

Yours sincerely

Mr Rockwell Charles
Enforcement/ Environmental Health Officer
Nuisance Control Team
Regulatory Services
Brent Council
Tel : 0208 937 6458
Email : Rockwell.charles@brent.gov.uk



REGENERATION AND GROWTH

Environment and Protection
Brent Civic Centre, Engineers Way,
Wembley, Middlesex. HA9 0FJ

Tel: (020) 8937 5252
Direct Line 0208 937 6458
Fax: (020) 8937 5150
Email: environmentandprotection@brent.gov.uk
Web: www.brent.gov.uk/eh
Date: 22/05/2016

Mr Anderson Jesus Egydio Ferreira

Company Director
O Castelo Limited
988 -992 Harrow Road
London NW10 5NT

Your Ref:
Our Ref: SR/03680/06
Contact: Rockwell Charles

Dear **Mr AJ Egydio Ferreira**

RE: Noise Disturbance from O Castelo 988-992 O Castelo 988-992 Harrow Road, London NW10 5NT Harrow Road, London NW10 5NT.

This Council has a responsibility under the Environmental Protection Act 1990 to ensure that residents can enjoy the comfort of their home without being unduly disturbed by noise.

A complaint of noise nuisance registered against the above premises was investigated by Mr Rockwell Charles of the Council's Nuisance Control Team on **22nd May 2016** at **00:30hrs**. The Officer has reported that in his opinion the complaint was justified because the noise from the **loud amplified music and speech** was causing nuisance and preventing sleep in neighbouring premises.

You should be aware that causing noise nuisance is an offence for which the Council can take legal proceedings. A successful prosecution can result in **an unlimited fine** and a **criminal record** being imposed.

As the **legal owner** of the premises, you are responsible for the nuisance. I attach with this letter a Noise Abatement Notice, which requires you to take steps to ensure that noise nuisance does not occur again. If you ignore this notice, the Council may have to begin the legal process mentioned above.

I ask you to have regards for your neighbours in future and sincerely hope that it would not be necessary for us to take legal action. If you would like to discuss any of the above or the requirements of the enclosed notice, please do not hesitate to contact me on the details provided below.

Yours sincerely,

Mr Rockwell Charles
Enforcement/ Environmental Health Officer
Regulatory Services
Brent Council
Tel : 0208 937 6458
Email : Rockwell.charles@brent.gov.uk
c.c. **Nuisance Control Team** / attn: Mr Martin Wood - Enforcement Officer



REGENERATION AND GROWTH

Regulatory Services
Brent Civic Centre, Engineers Way,
Wembley, Middlesex. HA9 0FJ

Tel: (020) 8937 5252
Direct Line 020-8937 5176
Fax: (020) 8937 5150
Email: environmentandprotection@brent.gov.uk
Web: www.brent.gov.uk
Date: 15/05/2015

Mr. Nuno Cabral
Benfica Restaurant
988-992 Harrow Road
London
NW10 5NT

Your Ref:
Our Ref: SR/03680/06
Contact: Ketan Joshi

Dear Mr.Cabral,

Noise Nuisance - Environmental Protection Act 1990
Benfica Restaurant, 988-992 Harrow Road, London, NW10 5NT

Further to our telephone conversation on 14/05/15, I write to summarise the outcome of the conversation as well as clarify the Council's position on the matter:

As per the notice served on you on 07/05/2011 under section 80 of the Environmental Protection Act 1990, you are required to ***"Cease or cause to cease the playing of amplified music and amplified speech at such a level as to constitute a nuisance"***.

This can be achieved by a number of methods and the Council will not be prescriptive as to what actions you must take. I have given you suggestions on how you may accomplish this; however the final decision will be yours, depending on your unique business needs i.e. music and vocals from a live musician. You are advised to use your discretion and independent, professional advice on the matter.

As a reminder, some of the options are:

1. Cease playing music completely
2. Lower music to a level that does not cause a statutory noise nuisance
3. Use a sound limiter
4. Upgrade the sound insulation of the premises

You are also reminded that by installing a sound limiter and/or upgrading sound insulation would not discharge your liability under the aforementioned notice and legislation and if further complaints are received and formally verified, you may be subject to prosecution and/or a Licence Review.

You have already been notified about a first contravention of the notice which was witnessed on 03/05/15. At this stage, the Council has agreed to provide you with advice and support to assist you with complying with the notice. As discussed, the Nuisance Control Team can assist with setting suitable volume levels as well as providing informal and non-prescriptive advice.

* My colleague Martin Wood has visited your premises and noted very poor sound insulation and as a result was unable to set a suitable level that would not cause a further noise nuisance and potential breach of notice. Considering that you are contemplating an upgrade of your sound insulation, I am prepared to negotiate with the complainant(s) and as a compromise, attempt to set a temporary workable sound level while works at your premises are completed.

This compromise is intended to allow for the continuity of your business as well as provide some degree of relief to the complainant. Please note that the set volume level serves only as a temporary guide and subject to change if further complaints are received, and your full cooperation is expected in reducing levels further if required.

It is noted that you have agreed to suspend the live musician performance temporarily pending works on upgrading your sound insulation. You are advised to keep the Nuisance Control Team updated on the progress of the sound insulation works and it is your responsibility to request a further visit from a member of the team to set suitable sound levels upon completion of works.

You are advised to use the services of a professional Acoustic Consultant. You may wish to refer to the Institute of Acoustics website for a list of qualified consultants:

<http://www.ioa.org.uk/find-acoustics-specialist-or-supplier>

Or you may contact them using the details below:

Institute of Acoustics	Tel: +44 (0) 1727
3rd Floor St Peter's	848195
House	Fax: +44 (0) 1727
45-49 Victoria Street	850553
St. Albans	Email: ioa@ioa.org.uk
Hertfordshire	
AL1 3WZ	

Please contact me or the Nuisance Control Team should you require any further information:

Ketan.joshi@brent.gov.uk
0208 937 5176
ens.noiseteam@brent.gov.uk
0208 937 5252

Please quote ref: 03680/06

Yours sincerely,

Ketan Joshi

Environment and Protection

