

Meeting of the

# LICENSING SUB COMMITTEE

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Tuesday, 20 August 2013 at 6.30 p.m.

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## SUPPLEMENTAL AGENDA

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### VENUE

The Council Chamber, Town Hall, Mulberry Place, 5 Clove Crescent,  
London, E14 2BG

	PAGE NUMBER	WARD(S) AFFECTED
5.3 Application for a Temporary Event Notice for Car Park rear of Rhythm Factory, 16-18 Whitechapel Road, London E1 1EW	1 - 52	Whitechapel

"If the fire alarm sounds please leave the building immediately by the nearest available fire exit, to which a Fire Warden will direct you. Please do not use the lifts. Please do not deviate to collect personal belongings or vehicles parked in the complex. If you are unable to use the stairs, a member of staff will direct you to a safe area. On leaving the building, please proceed directly to the Fire Assembly Point situated by the lake on Saffron Avenue. No person must re-enter the building until instructed that it is safe to do so by the Senior Fire Marshall. The meeting will reconvene if it is safe to do so, otherwise it will stand adjourned."

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Simmi Yesmin, Democratic Services

Tel: 020 7364 4120, E-mail: [simmi.yesmin@towerhamlets.gov.uk](mailto:simmi.yesmin@towerhamlets.gov.uk)

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# Agenda Item 5.3

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>	20 August 2013	<b>Unclassified</b>	LSC 13/134	

Report of <b>David Tolley</b> <b>Head of Consumer and Business Regulation</b>	Title: <b>Licensing Act 2003 Temporary Event Notice</b>
Originating Officer: <b>Kathy Driver</b> <b>Principal Licensing Officer</b>	Ward affected: <b>Whitechapel</b>

## 1.0 Summary

Applicant: Mr. Bernard Bakpa

Address of Premises: Car Park rear of Rhythm Factory  
16-18 Whitechapel Road  
London E1 1EW

Objectors: Environmental Protection  
Metropolitan Police

## 2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and objections then adjudicates accordingly.

**LOCAL GOVERNMENT 2000 (Section 97)**  
**LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
File Only		Kathy Driver 020 7364 5171

### 3.0 **Background**

- 3.1 This is an application for a Standard Temporary Event Notice.
- 3.2 Enclosed is a copy of the application. (**See Appendix 1**).
- 3.3 The applicant has described the application as dance party with pay bar including the sale of alcohol and regulated entertainment.
- 3.4 The premises that has been applied for is:  
Car park at rear of Rhythm Factory, 16-18 Whitechapel road, London E1 1EW
- 3.5 The dates that have been applied for are as follows:  
24<sup>th</sup> August 2013 from 12:00 hours to 22:00 hours
- 3.6 A map showing the relevant premises and immediate area is included as **Appendix 2**. Maps have also been provided as part of the application.
- 3.7 The applicant has provided the following documents in relation to this application:  
Security Plan – **Appendix 3**  
Residents Letter – **Appendix 4**  
Photo of position of stage area – **Appendix 5**
- 3.8 The applicant has made reference to the DEFRA Guidance for Local Authorities in relation to noise, I therefore enclose a copy in **Appendix 8**

### 4.0 **Temporary Event Notices**

- 4.1 Temporary Event Notices (TENs) are a creation of the Licensing Act 2003. They provide a method by which licensable activities can be carried out on a temporary basis (max. 168 hrs) without a licence. The maximum number that can attend at any one time is 499. At least 10 full working days notice must be given to the licensing authority. When a TEN cannot be obtained, for example the event is over 499, then a full premises licence must be obtained, for a limited duration.
- 4.2 The licensing authority cannot oppose an application, (nor can local residents or businesses. The licensing authority must reject any application that does not meet the rules as to numbers, maximum per year etc. The limits are now as follows: 12 TEN per calendar year or 21 days. The responsible authorities that can object is the Metropolitan Police or Environmental Protection.
- 4.3 The Police and Environmental Protection can object on the grounds that allowing the event to go ahead will undermine one of the Licensing Objectives.

- 4.4 Following an objection by the relevant responsible authority one or more conditions may be imposed by the Licensing Authority
- (a) if it considers it appropriate for the promotion of the licensing objectives to do so,
  - (b) the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice, and
  - (c) the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.
- 4.5 Where the authority decides to impose one or more conditions;
- (a) the authority must give the premises user notice of the decision;
  - (b) the notice must be accompanied by a separate statement (the “statement of conditions”) which sets out the conditions that have been imposed on the temporary event notice; and
  - (c) a copy of the notice and statement of conditions must be given to each relevant party.
- 4.6 LATE TENs have been created through the Police Reform and Social Responsibilities Act 2011, a Late TEN can be made no later than FIVE working days and no earlier than NINE working days before the event. The limits to these applications are no more than 2 for a non personal licence holder or no more than 10 for a personal licence holder.
- 4.7 The Police and Environmental Protection can object to Late TENs, if an objection is made the Licensing Authority must issue a counter notice advising the event cannot take place.

## 5.0 **Objections**

5.1 The Police objections are contained in **Appendix 6**.

5.2 Environmental Protection objections are contained in **Appendix 7**.

## 6.0 **Advice to Members**

6.1 The Police Reform and Social Responsibility Act 2011 have amended legislation whereby Environmental Protection alongside Police can object to Temporary Event Notice under any of the licensing objectives.

6.2 This hearing is required by the Licensing Act 2003. As always the decision is on the civil burden of proof, i.e. the balance of probability.

- 6.3 Members can consider any of the licensing objectives. Other matters can also be dealt with elsewhere by primary legislation.
- 6.4 Premises users are not required to be on the premises for the entire duration of the event authorised by the TEN, but they will remain liable to prosecution for certain offences that may be committed at the premises during the period covered by it. These include, for example, the offences of the sale of alcohol to a person who is drunk; persistently selling alcohol to children; and allowing disorderly conduct on licensed premises.
- 6.5 The police or local authority exercising environmental health functions may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified. If there is no agreement, the licensing authority must hold a hearing to consider the notice.

## 7.0 Legal Comments

- 7.1 The Council's legal officer will give advice at the hearing.

## 8.0 Finance Comments

- 8.1 There are no financial implications in this report.

## 9.0 Appendices

<b>Appendix 1</b>	A copy of the application
<b>Appendix 2</b>	Maps of the area
<b>Appendix 3</b>	Security Plan
<b>Appendix 4</b>	Residents Letter
<b>Appendix 5</b>	Stage area
<b>Appendix 6</b>	Police Objection
<b>Appendix 7</b>	Environmental Protection objection
<b>Appendix 8</b>	DEFRA guidance

# Appendix 1



Fee: 21
Receipt No: 00183-5651

2418113  
069469

## LONDON BOROUGH OF TOWER HAMLETS Temporary Event Notice

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

You should keep a copy of the completed notice for your **records**. You must send at least one **copy** of this **notice** to the licensing authority and additional copies must be sent to the chief officer of police and the local authority exercising environmental health functions for the area in which the premises are situated. The licensing authority will give to you written acknowledgement of the receipt of the notice.

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

<b>1. The personal details of premises user (Please read note 1)</b>			
<b>1. Your name</b>			
Title	Mr <input checked="" type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state)		
Surname	BAKPA		
Forenames	BERNIE		
<b>2. Previous names (Please enter details of any previous names or maiden names, if applicable. Please continue on a separate sheet if necessary)</b>			
Title	Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other (please state)		
Surname	Not applicable		
Forenames			
<b>3. Your date of birth</b>		Day 13	Month 04 Year 1960
<b>4. Your place of birth</b>		WARRI, NIGERIA	
<b>5. National Insurance Number</b>		N27110290	
<b>6. Your current address (We will use this address to correspond with you unless you complete the separate correspondence box below)</b>			
RHYTHM FACTORY 16-18 WHITECHAPEL RD			
<b>Post town</b> LONDON		<b>Post code</b> E1 1EW	
<b>7. Other contact details</b>			
<b>Telephone numbers</b>		02073753774	
Daytime			
Evening (optional)			
Mobile (optional)			
Fax number (optional)			
<b>E-Mail Address (if available)</b>		stuart@rhythmfactory.co.uk	

TRADING STANDARDS  
02 AUG 2013



<b>8. Alternative address for correspondence (If you complete the details below, we will use this address to correspond with you)</b>	
c/- Anthony Hoete, Licencing Agent, WHAT_architecture, TransWorld House, 100 City Road, London	
Post town London	Post code EC1Y 2BP
<b>9. Alternative contact details (if applicable)</b>	
Telephone numbers: Daytime	WHAT_architecture 02070143106
Evening (optional)	Anthony Hoete 07790020881
Mobile (optional)	
Fax number (optional)	
E-Mail Address (if available)	hoete@whatarchitecture.com

<b>2. The premises</b>	
Please give the address of the premises where you intend to carry on the licensable activities or if it has no address give a detailed description (including the Ordnance Survey references) (Please read note 2)	
As indicated in hatched red on the attached plan: the carpark behind 16-18 Whitechapel Road	
Does a premises licence or club premises certificate have effect in relation to the premises (or any part of the premises)? If so, please enter the licence or certificate number below.	
Premises licence number	15675
Club premises certificate number	
If you intend to use only part of the premises at this address or intend to restrict the area to which this notice applies, please give a description and details below. (Please read note 3)	
Please describe the nature of the premises below. (Please read note 4)	
The proposed premises that apply to this TEN is currently used as a carpark during the week and vacant at the weekend.	
Please describe the nature of the event below. (Please read note 5)	
The event will be a dance music party with a pay bar. Even though the event is during the Bank Holiday Weekend the event will finish at the relatively early hour of 22h00 so as to minimise disturbances and facilitate management.	

3. The licensable activities		
Please state the licensable activities that you intend to carry on at the premises (please tick all the licensable activities you intend to carry on). (Please read note 6)		
The sale by retail of alcohol	<input checked="" type="checkbox"/>	
The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club	<input type="checkbox"/>	
The provision of regulated entertainment	<input checked="" type="checkbox"/>	
The provision of late night refreshment	<input type="checkbox"/>	
Are you giving a late temporary event notice? (Please read note 7)	<input type="checkbox"/>	
Please state the dates on which you intend to use these premises for licensable activities. (Please read note 8)		
24th August 2013		
Please state the times during the event period that you propose to carry on licensable activities (please give times in 24 hour clock). (Please read note 9)		
12h00 to 22h00		
Please state the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers. (Please read note 10)	499	
If the licensable activities will include the supply of alcohol, please state whether the supplies will be for consumption on or off the premises, or both (please tick as appropriate) (Please read note 11)	On the premises only	<input checked="" type="checkbox"/>
	Off the premises only	<input type="checkbox"/>
	Both	<input type="checkbox"/>

4. Personal licence holders (Please read note 12)	
Do you currently hold a valid personal licence? (Please tick)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
If "Yes" please provide the details of your personal licence below.	
Issuing licensing authority	LONDON BOROUGH OF GREENWICH
Licence number	WK/200511346
Date of issue	14/10/2004
Date of expiry	14/10/2015
Any further relevant details	

5. Previous temporary event notices you have given (Please read note 13 and tick the boxes that apply to you)		
Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If answering yes, please state the number of temporary event notices you have given for events in that same calendar year	6	
Have you already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

6. Associates and business colleagues (Please read note 14 and tick the boxes that apply to you)		
Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If answering yes, please state the total number of temporary event notices your associate(s) have given for events in the same calendar year	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Has any associate of yours already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Has any person with whom you are in business carrying on licensable activities given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If answering yes, please state the total number of temporary event notices your business colleague(s) have given for events in the same calendar year.		
Has any person with whom you are in business carrying on licensable activities already given a temporary event notice for the same premises in which the event period: a) ends 24 hours or less before; or b) begins 24 hours or less after the event period proposed in this notice?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

7. Checklist (Please read note 15)	
I have (Please tick the appropriate boxes)	
Sent at least one copy of this notice to the licensing authority for the area in which the premises are situated	<input checked="" type="checkbox"/>
Sent a copy of this notice to the chief officer of police for the area in which the premises are situated	<input checked="" type="checkbox"/>
Sent a copy of this notice to the local authority exercising environmental health functions for the area in which the premises are situated	<input checked="" type="checkbox"/>
If the premises are situated in one or more licensing authority areas, sent a copy of this notice to each additional licensing authority	<input type="checkbox"/>
If the premises are situated in one or more police areas, sent a copy of this notice to each additional chief officer of police	<input type="checkbox"/>

If the premises are situated in one or more local authority areas, sent a copy of this notice to each additional local authority exercising environmental health functions	<input type="checkbox"/>
Made or enclosed payment of the fee for the application	<input type="checkbox"/>
Signed the declaration in Section 9 below	<input type="checkbox"/>

**8. Condition (Please read note 16)**  
 It is a condition of this temporary event notice that where the relevant licensable activities described in Section 3 above include the supply of alcohol that all such supplies are made by or under the authority of the premises user.

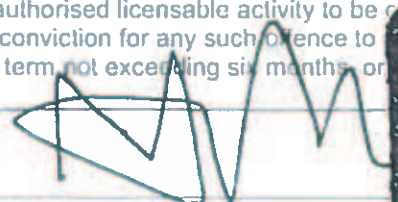
**9. Declarations (Please read note 17)**

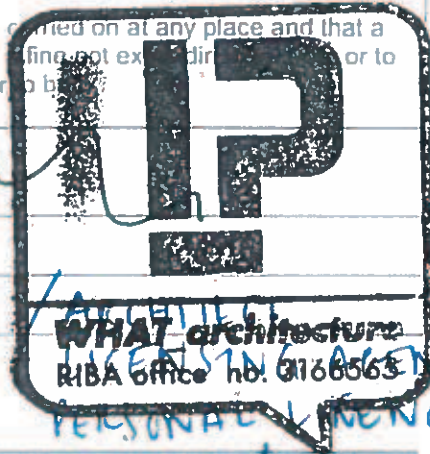
The information contained in this form is correct to the best of my knowledge and belief

I understand that it is an offence:

(i) to knowingly or recklessly make a false statement in connection with this temporary event notice and that a person is liable on conviction for such an offence to a fine up to level 5 on the standard scale; and

(ii) to permit an unauthorised licensable activity to be carried on at any place and that a person is liable on conviction for any such offence to a fine not exceeding £5000 or to imprisonment for a term not exceeding six months, or to both.

Signature	
Date	17 July 2013
Name of Person signing	Anthony Hoete



For completion by the licensing authority

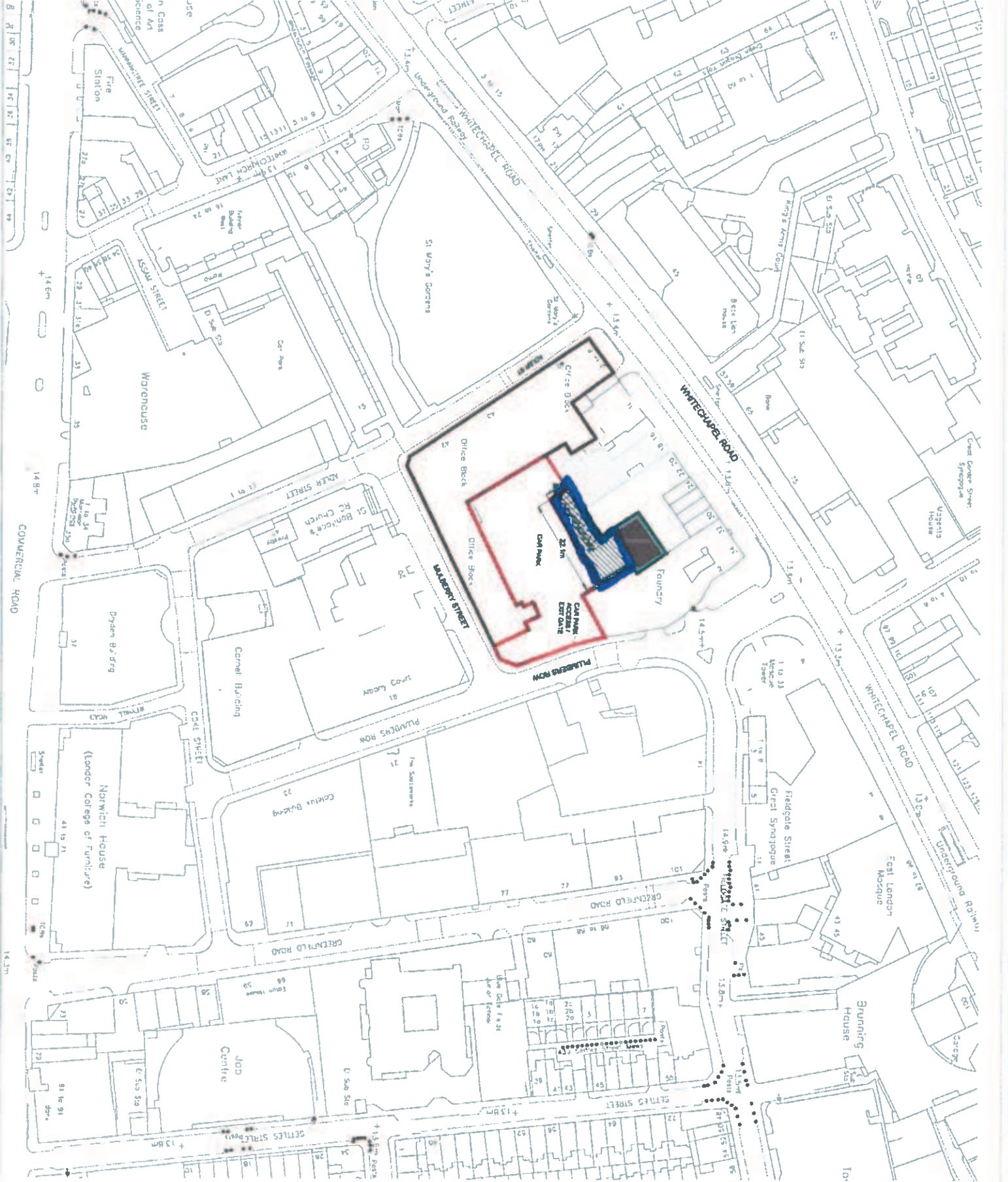
**10. Acknowledgement (Please read note 18)**

I acknowledge receipt of this temporary event notice.

Signature	
Date	
Name of Officer signing	

On behalf of the licensing authority

16144 / Issued by LBTF



1 All Drawings are to be Checked On-Site  
 1/17 Construction



- POSSIBLE STAGE LOCATION
- THE RHYTHM FACTORY
- EXTERNAL CAR PARK AREA
- PROPOSED AREA TO BE USED
- RESIDENTIAL AREAS

THE RHYTHM FACTORY  
 USE OF THE EXTERNAL  
 CAR PARK AREA ON  
 24/08/2013

AREA LOCATION PLAN

1:1250  
 MAY 2013  
 THE RHYTHM FACTORY  
 16 - 18 WHITECHAPEL ROAD  
 LONDON  
 E1 1EW  
 Tel: 020 7 375 3774

01

# Appendix 2

# Appendix 3

**Prevention of Crime and Disorder:**

**1: ACCESS THROUGH A SECURED SITE OF A BUSY PUBLIC ROAD**

The application for a TEN for an outdoor event utilising the carpark behind the Rhythm Factory. Access to this area will be via the secured 16-18 Whitechapel Road entry to minimise prevent crime and disorder. Once in the car park, guests will not be able to return into the Licenced Premises ('the venue'). During the hours of the temporary event (12h00 noon until 22h00) no licencable activities will take place in the venue. There is no commercial reason to hold an indoor daytime event during summer.

**2: CRIME PREVENTION**

There has been speculation that Police resources will be stretched over Carnival Weekend. The Notting Hill Carnival, however, runs from 11h00 – 19h00 on Sunday 25<sup>th</sup> and Monday 26<sup>th</sup> August. This TEN has been deliberately planned to avoid placing further stresses on police resources by occurring the day before: Saturday 24<sup>th</sup> August. In the event that there is a tangible reduction in Police resources on the Saturday, 10 Security Industry Authority operatives will be in attendance during the event. At one SIA operative per 50 guests, this is two times the industry guidance of 1:100 and far greater than any police presence. All guests will be subjected to full body searches incorporating metal detection wands to reduce possibility of weapons etc being brought into the venue.

All drinking vessels will be made of plastic.

**3: FIRE EGRESS / MEANS OF ESCAPE**

Due to the proposed event management, fire egress is simple. In the first instance SIA operatives will release the secured gate on Plumbers Row. In the unlikely event of their being a fire at this gate, an Alternate Means of Escape will be provided back through the venue.

**4: HOURS OF OPERATION**

The TEN will be effective from 12h00 noon until 22h00 which is earlier than many local Licenced Premises and this has been deliberately done to minimise disorder.

**5: WCs**

Current guidance proposes 1 WCs per 100 guests. The Security Plan enhances this guidance and proposes 1 Wc per 50 guests.



# Appendix 4

PUBLIC NOTIFICATION: 6<sup>th</sup> August 2013

Dear Resident,

**Rhythm Factory Temporary Event Notice: 14<sup>th</sup> Birthday Party**

On Saturday 24<sup>th</sup> August 2013, the Rhythm Factory will hold a temporary music event for a maximum of 489 persons in the carpark adjoining the venue.

To mitigate against public nuisance:

1. this outdoor event will start at 12h00 noon and conclude promptly at 22h00.
2. The Dj booth will not be in an open space but be in a built-up space adjacent to the rear of the Rhythm Factory where there are the least number of overlooking residences.
3. Access to the carpark will be through the 6-18 Whitechapel Road entry. In the event of fire or emergency access, the gate to Plumbers Row will be opened by licenced Security Industry Authority operatives. This will maintain control of the site and stop opportunists from gaining access.
4. An acoustician will monitor the site boundaries along Plumbers Row and Mulberry Street to achieve a reasonable level as determined by reference to the underlying level of noise. The underlying level of noise is indicative of the level of noise that would otherwise be present in the absence of the noise causing complaint. It is possible to assess, by judgment or measurement, that the underlying level of noise is at least 10dB below the LAeq, 5min of the noise from the event
5. The organiser will adopt the Guidance offered by DEFRA, The Noise Act 1996 as amended by Anti-social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005

Should you wish to know anything more about the event please call Stuart on 07940930387.

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# Appendix 5

## Kathy Driver

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**From:** Anthony Hoete <hoete@whatarchitecture.com>  
**Sent:** 06 August 2013 20:51  
**To:** Ian Wareing  
**Cc:** Licensing; Bernie Bakpa  
**Subject:** 130806\_public notification + method statement  
**Attachments:** DEFRA noise-act-guidance.pdf; 208rhy\_PUBLIC NOTIFICATION.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Ian and Kathy,

Please find attached our public notification, risk assessment and method statement.

Best wishes.

Anthony



**Anthony Hoete**

8-{})

*London (Olympic) Borough of Newham Design Review Panel  
London (Olympic) Borough of Hackney Design Review Panel  
London Borough of Brent Design Review Panel  
GlassHouse Community Led Design Enabler  
Interstices Journal of Architecture and Arts Advisory Board  
Blablarchitecture Editor  
Te Maru O Hinemihi  
RMIT Research Scholar  
UCL Institute of Archeology Honorary Senior Research Associate*

Director

# Appendix 6

## Kathy Driver

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**From:** MARK.J.Perry@met.pnn.police.uk  
**Sent:** 06 August 2013 18:06  
**To:** hoete@whatarchitecture.com; Licensing  
**Cc:** bernieonpatrol@yahoo.co.uk  
**Subject:** TEN Car Park behind 16-18 Whitechapel Road - Met Police Objection

Dear Kathy, Anthony, Bernie,

Tower Hamlets Police formally object to the Temporary Event Notice application for the car park behind 16-18 Whitechapel Road.

The reason for the objection is on the grounds of crime and disorder and the reasons are outlined below:

The Rhythm Factory is a licensed venue with a capacity of 400 people and the application is for a Temporary Event with the maximum number of people at the event set to be 499 making a total of 899 people either at the event or at the Rhythm Factory venue. This makes it a sizable event yet there has been no event management or security plan submitted.

In December 2012, there was a serious incident at the venue in where Police believe overcrowding and poor security and management led to a fight and several Police Units having to attend. The event was serious enough for the license to be reviewed by Police and at the review hearing a new security plan was imposed as a condition of the license. To apply to host an event with over double the capacity of the Rhythm Factory without either an operating schedule or security plan is, in my opinion reckless.

The applicant has given no indication as to how people enter the area, will it be in Plumbers Row, if so there is no mention of how the queue will be managed and how they will prevent customers from spilling out into the road of what is a busy side road that connects Whitechapel with Commercial Road, two of the main roads in Tower Hamlets. If the idea is to have people queue in the car park then there is no plan as to how they would prevent damage to people cars parked in the car park.

There is no indication of how the applicant will control people from the Rhythm Factory entering the venue area and how he will prevent people from the event entering the Rhythm Factory. This will make keeping an accurate record of numbers in each venue almost impossible. If an incident of violence or disorder were to break out there is a risk that it could spread to the people inside the Rhythm Factory and of course visa versa which could lead to a more serious incident.

The door from the back of the Rhythm factory that leads to the venue in Temporary Event Notice is a fire door and the car park is a designated escape route for people in the Rhythm factory if there is a fire. By having an event there the fire exit will be blocked which could lead to serious injury or loss of life in the event of a fire in the venue.

There is no provision as far as I can see of where people will go to the toilet, one of the main complaints of residents in the area including Brick Lane is of people urinating in the street and on their doorsteps yet there is no place for 499 people to go to the toilet. There is also no indication as to how the applicant will prevent disorder as people leave the venue. With up to 499 people leaving at 10:00pm there is the potential for local residents to suffer as these people leave the area, especially if they are under the influence of alcohol.

The bank holiday weekend, which includes the Saturday the 24th August the proposed date of the Temporary Event Notice is one of the busiest policing weekends of the year as it includes the Notting Hill Carnival. While the Carnival takes place on Sunday the 25th and Monday the 26th a large number of police officers are required to police the area over the whole weekend and are removed from normal duties. The weekend is also likely to be very busy in the Brick Lane and Whitechapel areas with many people looking to attend the "Shoreditch Triangle" which includes Brick Lane and to a degree the area where the Rhythm Factory is located on Whitechapel Road.

With the expected increased number of people in the Brick Lane and Whitechapel area, having an event with almost 900 people in attendance would put additional strain on Police resources. With an event of this size with no event management or security plan it is almost inevitable that there will be disorder and Police will resources will be stretched.

I therefore ask for this application to be rejected.

Regards

Pc Mark Perry  
Licensing Officer  
Tower Hamlets Borough  
Limehouse Police Station  
27 West India Dock Road  
0207 275 4950

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Twitter: [@metpoliceuk](https://twitter.com/metpoliceuk)**

# Appendix 7



## Kathy Driver

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**From:** Ian Wareing  
**Sent:** 05 August 2013 16:23  
**To:** Kathy Driver  
**Subject:** Representation for TEN - Car Park behind Rhythm Factory

EH wish to make representation against the application for a TEN at the rear car park behind the Rhythm Factory.

I have spoken to the applicant and his Architect and at this moment, remain concerned that the event would cause significant Public Nuisance to the local residents.

The event specifics have yet to be provided, but it appears that it is an open air dance music event with up to 499 attendees. It is also yet to be confirmed as to whether this event is also making use of the Rhythm Factory itself.

There are residents situated overlooking the car park whom will be impacted by this event. As mentioned this space is usually a car park and I would expect that this would be extremely quiet during most weekends. To have a dance music event in this area would seriously impact the local residents peaceful enjoyment of their homes especially at a weekend when they would expect to relax in their own property.

I have explained to the applicant and his Architect the short turnaround times for TEN's (3 days) and that I would be making a representation against their application on the grounds of Prevention of Public Nuisance until they can offer any further information that may be of assistance.

Regards,

Ian

**Ian Wareing**  
Technical Officer  
Pollution Team  
Environmental Protection  
Environmental Health  
2<sup>nd</sup> Floor  
Gladstone Place Offices  
1 Ewart Place  
London  
E3 5EQ

020 7364 5008

[ian.wareing@towerhamlets.gov.uk](mailto:ian.wareing@towerhamlets.gov.uk)

# Appendix 8

# **The Noise Act 1996 as amended by Anti-social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005**

## **Guidance to Local Authorities in England**

**March 2008  
Version 1**

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Published by the Department for Environment, Food and Rural Affairs

# Overview

This document provides guidance to local authorities in England on the powers available to them to deal with night noise emanating from dwellings and licensed premises which exceeds the “permitted level” of noise prescribed under the Noise Act 1996 as amended by the Clean Neighbourhoods and Environment Act 2005. Whereas prior to the amendments made by the Clean Neighbourhoods and Environment Act 2005 the Noise Act only applied to night noise from dwellings, a complaint may now be made by someone within a dwelling concerning noise emitted from ‘any premises in respect of which a premises licence or a temporary event notice has effect’.

This guidance replaces previous guidance on the Noise Act 1996 contained in Environment Circular 8/97 and Defra Circular NN/31/03/2004.

The powers under the Noise Act 1996 are in addition to those possessed by local authorities under the Environmental Protection Act 1990 and the Noise and Statutory Nuisance Act 1993 on statutory nuisance.

Section 79 of the Environmental Protection Act 1990 places a duty on local authorities to inspect their areas periodically for statutory nuisances, and to take such steps as are reasonably practicable to investigate complaints of statutory nuisance. Where a statutory nuisance from noise exists or is likely to occur or recur, local authorities shall serve an abatement notice requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence, or requiring the execution of works, and the taking of such other steps necessary for these purposes. Local authorities can defer serving an abatement notice under section 80 (2A) – 2(E) of the Environmental Protection Act 1990 for statutory nuisance from noise for up to seven days in order to take other appropriate steps to abate the statutory nuisance, one of which may be use of the Noise Act 1996 for night noise.<sup>1</sup> This optional seven day deferral was introduced by the Clean Neighbourhoods and Environment Act 2005. Local authorities do not have to make use of this seven day deferral period. The abatement notice can be served at any point within the seven day period, if used, and must be served at the end of the seven day period if the statutory nuisance does or may occur or recur.

Separate guidance on the closure of licensed premises on the grounds of noise which amounts to a public nuisance has been produced by the Department for Culture, Media and Sport.

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<sup>1</sup> Guidance on deferral of the service of an abatement notice is contained in the guidance on noise issued in support of the Clean Neighbourhoods and Environment Act 2005: [www.defra.gov.uk/environment/localenv/legislation/cnea/noise.pdf](http://www.defra.gov.uk/environment/localenv/legislation/cnea/noise.pdf)

# Night Noise Offence

## General Principles

1. This guidance does not constitute legal advice and each local authority should take legal advice where it is unsure.
2. The provisions of the Noise Act 1996 are intended to provide an alternative means of addressing disturbances caused by excessive noise. Previously, excessive noise could only be dealt with if it was thought to create a statutory nuisance. It is not always easy to establish such a case. Under the Noise Act 1996 an offence is committed if a person fails to ensure that any noise emitted from their premises does not exceed the permitted level.
3. In practice, upon receiving a complaint, a local authority may investigate the complaint and may as a result of the complaint issue a warning notice. A warning notice may be served on the person responsible for the noise if the local authority is satisfied that the noise, if measured from the complainant's dwelling, would or might exceed the permitted level. Failure to comply with the notice may result in an offence being committed.
4. The offence is based on exceeding an objectively measured acoustic criteria ('the permitted level').
5. Instead of bringing a prosecution against someone who has failed to comply with a warning notice, a local authority may issue a fixed penalty notice. A fixed penalty notice provides a person with the opportunity to discharge liability to conviction by payment of the prescribed amount within 14 days. Payment within this time period will avoid court proceedings. The fixed penalty for night noise from domestic premises can be set locally or defaults to £100. The fixed penalty for night noise from licensed premises is set at £500.
6. The Noise Act 1996 does not require the local authority to measure the level of noise being emitted before a warning notice is issued. At the initial investigation stage it suffices for the local authority to be satisfied that the noise, if it were measured from within the complainant's dwelling, would or might exceed the permitted level. A warning notice is often sufficient to persuade the noise maker to keep the noise to a reasonable level. The noise only needs to be measured if it is suspected that a warning notice is contravened and a local authority wishes to either consider (a) issuing a fixed penalty notice in respect of a night noise offence committed from a dwelling or other premises, or (b) prosecution for the same offences.

7. **The permitted level for the night noise offence should not be taken as an indicator of whether or not the noise may also constitute a statutory nuisance.** It is possible that a noise which is not an offence under the Noise Act 1996 may nevertheless be a statutory nuisance. It is also possible that noise which is an offence under the Noise Act 1996 may not be a statutory nuisance.

## Definitions and Interpretations

### Definition of 'dwelling'

8. 'Dwelling' is defined in section 11(2) of the Noise Act 1996 as meaning any building, or part of a building, used or intended to be used as a dwelling, and reference to noise emitted from a dwelling will include noise emitted from any garden, yard, outhouse or other appurtenance belonging to or enjoyed with the dwelling.

### Definition of 'premises licence' and 'temporary event notice'

9. Schedule 1 of the Clean Neighbourhoods and Environment Act 2005 inserts a new subsection 2(2)(b) into the Noise Act 1996 so that a complaint by someone within a dwelling about noise from 'any premises in respect of which a premises licence or a temporary event notice has effect' can now also be investigated under the Noise Act 1996. 'Premises licence' and 'temporary event notice' have the same meaning as in the Licensing Act 2003.
10. 'Premises licence' means a licence granted by a licensing authority under Part III of the Licensing Act 2003, authorising one or more licensable activities in respect of any premises. 'Premises' includes any land or place which is specified in the premises licence (or in the temporary event notice). This could include land within the curtilage of premises that is outdoors, although this must be specified in the premises licence.
11. 'Temporary event notice', for the purposes of the Noise Act 1996, is to be treated as having effect in accordance with section 171(6) of the Licensing Act 2003. That is, the temporary event notice has effect from the time it is given in accordance with Part 5 of the Licensing Act 2003 (Permitted Temporary Activities) until:
  - (a) the time it is withdrawn
  - (b) the time a counter notice is given under Part 5 of the Act
  - (c) the expiry of the event period specified in the temporary event notice

whichever first occurs.

12. 'Licensable activities' are listed under section 1(1) of the Licensing Act 2003. They are:

- (a) the sale by retail of alcohol
- (b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club
- (c) the provision of regulated entertainment, and
- (d) the provision of late night refreshment.

**Definition of 'the offending dwelling'**

13. 'The offending dwelling' is a dwelling in respect of which an individual present in another dwelling during night hours complains that excessive noise is being emitted. – See section 2(2)(a) of the Noise Act 1996.

**Definition of 'the offending premises'**

14. 'The offending premises' is any premises in respect of which a premises licence or a temporary event notice has effect and concerning which an individual present in a dwelling during night hours complains that excessive noise is being emitted. The Noise Act 1996 in places refers to "other premises". These other premises are offending premises. See section 2(2)(b) and 2(4)(a) of the Noise Act 1996.

**Night hours**

15. Under section 2(6) of the Noise Act 1996, this means the period beginning with 11pm and ending with the following 7am.

16. For the purposes of the 1996 Act and in relation to England, a 'local authority' is defined in section 11 of that Act as:

- in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
- outside Greater London -
- any district council;
- the council of any county so far as they are the council for any area for which there are no district councils;
- the Council of the Isles of Scilly.



## Detailed Guidance

This part of the guidance explains how each section of the Noise Act 1996 works following amendments made under the Anti-social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005.

17. As a result of the amendments to the Noise Act 1996 made by section 42 of the Anti-social Behaviour Act 2003, the powers in relation to night noise offences may be used **by any local authority in England**. Local authorities **do not need to adopt the Noise Act 1996**, or provide a 24 hours a day, 7 day a week noise service in order to use the powers in the Act, as was previously the case.
18. Night noise may be investigated by a local authority under the Noise Act 1996 further to a complaint made by any individual **present in a dwelling during night hours** that excessive noise is being emitted from an offending dwelling or from offending premises.
19. It should be noted that this *power* differs from the mandatory *duty* in section 79(1)(g) of the Environmental Protection Act 1990 for local authorities to take reasonably practicable steps to respond to complaints of statutory noise nuisance from 'a person living within its area'. It should also be noted that unlike statutory nuisance, there is no additional duty on a local authority to inspect its area from time to time to detect the presence of excessive night noise under the Noise Act 1996.
20. The Noise Act 1996 can be used where a local authority thinks, following a complaint, that the Noise Act 1996 will provide an effective means to deal with excessive night noise. If a statutory nuisance is occurring, or is likely to occur or recur, the local authority can still use the Noise Act 1996 should investigating officers think that this will be an effective means to deal with the noise, by deferring service of an abatement notice for statutory noise nuisance for up to seven days under section 80 (2A) – (2E) of the Environmental Protection Act 1990.
21. If a local authority receives a complaint about night noise emitted from an offending dwelling or offending premises, it may arrange for an officer of the authority to take reasonable steps to investigate it.
22. Where a local authority receives a complaint from an individual within a dwelling in their area that relates to noise emitted from an offending

dwelling or offending premises which is situated in another local authority area, then the local authority receiving the complaint may treat such a dwelling or premises as within its area. See section 2(7) of the Noise Act 1996.

### **Level of service**

23. Detailed arrangements for the provision of services to respond to complaints of noise during night hours under the Noise Act 1996 are a matter for individual local authorities to determine in light of their assessment of local needs and circumstances. In particular, local authorities should give consideration to factors likely to be pertinent to such an assessment. These could include the number of complaints received, the timing of complaints and any weekly or seasonal variation in the rate of complaints, all of which might vary considerably during the night hours period, throughout a week and through the year.

24. A number of different arrangements may be appropriate, as determined by local needs and circumstances. The type of noise service considered appropriate may include officers on standby at a central location or on a call-out system from home, possibly covering targeted and varying hours between 11pm and 7am on selected nights each week and during specific times of the year e.g. 11pm to 3am at weekends and during busier summer periods.

### **How to respond to a complaint**

25. Under the Environmental Protection Act 1990 a local authority must take reasonably practicable steps to investigate a complaint about noise. Where appropriate, it may also arrange to investigate the complaint under the Noise Act 1996.

26. If a local authority wishes to use the Noise Act 1996, it is suggested that the local authority officer should explain to the complainant the procedure involved in investigating a night noise complaint, including the possible need to measure from within the complainant's dwelling and the conditions under which the measurement would be made. The local authority officer may also wish to explain the enforcement procedure for the night noise offence and use this initial contact as means to gain information to assist in dealing with the complaint.

27. The purpose of the investigation if using the Noise Act 1996 is to confirm the source of the noise and whether the noise level exceeds, or might exceed, the permitted level, and therefore to determine whether a warning notice may be issued. It is for the officer concerned to decide whether to assess the noise from inside or outside the complainant's dwelling and whether or not to use any device for measuring the noise. There is **no requirement** to

measure the noise at this stage.

28. There is **no requirement** to serve a warning notice. However, if a warning notice is not served, no night noise offence is committed if subsequent measurement shows that the permitted level is being exceeded.
29. In circumstances where an officer determines that the noise complained of does not exceed the permitted level, the complainant should be advised as soon as practicable to help the complainant better understand the reasons why their complaint has not resulted in action being taken against the alleged noise maker.
30. Where an officer decides, by judgment or by taking a measurement, that the noise complained of does not exceed the permitted level, or where the officer decides that the noise cannot be measured or feels that the provisions of the Noise Act 1996 are inappropriate, the officer may nevertheless be satisfied that the noise is or could in the future be a statutory nuisance under section 79 of the Environmental Protection Act 1990. In that event, the local authority is under a statutory duty to serve an abatement notice under section 80 of the Environmental Protection Act 1990, with the option under section 80 (2A) – (2E) to defer serving the abatement notice for up to seven days to take such other steps that are appropriate for abating the noise nuisance or prohibiting its occurrence or recurrence within that period.
31. In some cases, the investigating officer may be unsure as to whether the noise amounts to a statutory nuisance. If this is the case, further visits may be required to enable the officer to make a judgment on whether a statutory nuisance exists or may occur or recur. The complainant should be informed of the approach that the local authority intends to take.

#### **Statutory nuisance and the Noise Act offence**

32. If the investigating officer is satisfied that a statutory nuisance is occurring and that the permitted level of noise is being exceeded, then the mandatory duty to serve an abatement notice will apply. However, it should be noted that the duty to serve an abatement notice may be deferred for up to seven days under section 80(2A) – (2E) of the Environmental Protection Act 1990 while other appropriate steps are taken to abate the noise nuisance.

### **Section 3 - the warning notice**

33. A local authority has the power to serve a warning notice under section 3 of the Noise Act 1996 in respect of both offending dwellings and offending premises. Such a notice has a joint purpose. First, service of that notice alone may result in the noise being reduced. Secondly, an offence cannot

be committed under sections 4 or 4A of the Noise Act 1996 unless the local authority has first served a warning notice.

### **Content of warning notice**

34. The warning notice must:

- state that the officer considers that noise is being emitted from the offending dwelling or the offending premises during night hours;
- state that the officer considers that the noise exceeds, or may exceed, the permitted level as measured from within the complainant's dwelling;
- give warning:
  - in a case where the complaint is in respect of a dwelling, that any person who is responsible for noise which is emitted from the offending dwelling may be guilty of an offence if noise which exceeds the permitted level, as measured from within the complainant's dwelling, is emitted from the premises in the period specified in the notice;
  - in a case where the complaint is in respect of other premises, that the responsible person in relation to the offending premises may be guilty of an offence if noise which exceeds the permitted level, as measured from within the complainant's dwelling, is emitted from the premises in the period specified in the notice;
  - state the time at which it was served.

35. It is **not a requirement** to state the name and address of the complainant on the warning notice. Such a step may result in the intimidation of complainants.

36. The Noise Act 1996 does not provide for a standard form, but a suggested form has been published by the Chartered Institute of Environmental Health (available from [info@cieh.org](mailto:info@cieh.org)).

### **Specified period**

37. The period specified in the warning notice cannot begin earlier than ten minutes after the notice has been served and must continue until the following 7am. The notice may provide that the period commences later. For example, where the officer responds to a complaint of a noisy party and is assured that the party will cease in twenty minutes. If the officer believes that this is a reasonable response in the circumstances, then the period specified in the notice could begin in twenty minutes.

38. The notice ends automatically at 7am following service of the warning notice. There is no discretion in this matter. No more than one fixed penalty

notice can be given to a person in respect of noise emitted from a dwelling or offending premises during this period.

### **Service of warning notices**

#### **Offending dwellings**

39. The warning notice must be served by delivering it to any person present at, *or near*, the offending dwelling *and* appearing to the officer to be responsible for the noise (s.3(3)(a)), or, if it is not reasonably practicable to identify such a person, by leaving the notice at the offending dwelling (s.3(3)(b)).

40. Section 3(5) defines a person responsible for noise emitted from a dwelling as 'a person to whose act, default or sufferance the emission of the noise is wholly or partly attributable'.

#### **Offending premises**

41. Where the complaint is in respect of offending premises (i.e. those with a premises licence or in respect of which a temporary event notice has effect), section 3(3A) of the 1996 Act states that 'a warning notice must be served by delivering it to the person who appears to the officer of the authority to be the *responsible person* in relation to the premises at the time the notice is delivered'. In relation to offending premises, the warning notice **cannot** be served by leaving it at the premises.

42. A 'responsible person', under section 3(6) of the 1996 Act, means

- (a) the person who holds the premises licence if he is present at the premises at that time, or
- (b) where that person is not present at the premises at that time, the designated supervisor under the licence if he is present at the premises at that time, or
- (c) where neither of the above is present at the premises at that time, any other person present at the premises at that time who is in charge of the premises.

43. Where a *temporary event notice* has effect in respect of the premises the responsible person is:

- (a) the premises user (as defined in section 100(2) of the Licensing Act 2003) in relation to that notice if he is present at the premises at that time, or
- (b) where the premises user is not present at the premises at that time,

any other person present at the premises at that time who is in charge of the premises.

## **Section 4 – Offence where noise from a dwelling exceeds the permitted level after service of warning notice**

44. Section 4(1) provides that, if a warning notice has been served in respect of noise emitted from a dwelling, any person who is responsible for noise which:

- (a) is emitted from the dwelling in the period specified in the notice, and
- (b) exceeds the permitted level, as measured from within the complainant's dwelling,

is guilty of an offence.

45. Section 4(2) provides that it is a defence for a person charged with an offence under this section to show that there was a reasonable excuse for the act, default or sufferance in question.

46. Section 4(3) provides that a person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

## **Section 4A – Offence where noise from other premises exceeds the permitted level after service of warning notice**

47. Section 4A(1) provides that, if

- (a) a warning notice has been served under Section 3 in respect of noise emitted from premises,
- (b) noise is emitted from the premises in the period specified in the notice, and
- (c) the noise exceeds the permitted level, as measured from within the complainant's dwelling,

the responsible person in relation to the offending premises at the time at which the noise referred to in paragraph (c) is emitted is guilty of an offence. . See paragraphs 41 and 42 for the meaning of 'responsible person'.

48. Section 4A(2) provides that a person guilty of an offence under section 4A is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

49. Unlike the offence under section 4, it is not a defence under section 4A to show that there was a reasonable excuse for the act, default or sufferance in question.

#### **Offences under both section 4 and 4A**

50. In relation to offences under both section 4 and 4A, the local authority cannot take proceedings for a conviction under the Noise Act 1996 unless it has first correctly served a warning notice. Further, no such proceedings can occur unless the local authority has taken measurements of the noise; such measurement must be made from within the complainant's dwelling.

51. The local authority can decide, instead of prosecuting a person it believes to have committed an offence under section 4 or 4A, to offer that person the opportunity of accepting a fixed penalty notice to discharge liability to conviction.

### **Sections 4, 5 and 6 - assessment, measurement and determination of the noise**

52. It should be noted that, in contrast to statutory nuisance, the night noise offences are based on noise exceeding the maximum level of noise which may be emitted during night hours from any dwelling or other premises. This maximum level ("the permitted level") is determined by Directions made, in the case of England, by the Secretary of State in writing.

53. The measurement of the noise must be made from within the complainant's dwelling using an approved measuring device. Such Approval is made, in the case of England, by the Secretary of State in writing.

54. The permitted level has been slightly reduced from the previous level. Previously the permitted level for dwellings was 35 dBA if the underlying level of noise was no more than 25 dBA, or 10 dBA above the underlying level of noise where this exceeded 25 dBA. The permitted level is now set at **34 dBA if the underlying level of noise is no more than 24 dBA, or 10 dBA above the underlying level of noise where this exceeds 24 dBA.**

55. Use of an approved device may be made subject to conditions. The Directions and Approval for both offending dwellings and offending premises are available on the 'Noise' pages of the Defra website. If an approved device is not used or not used correctly, any measurement made may not be admissible as evidence in any court proceedings for the night noise offences.

### **Procedural points**

56. While the 1996 Act does not define the type of noise to which the new offence might apply, it is understood that the technical aspects of measuring the noise complained of means that there may be difficulties in assessing some impulsive or sporadic noises e.g. slamming doors and isolated incidents of shouting. The night noise offence is likely to be most appropriate for cases of disturbance from persistent noises e.g. amplified music or prolonged noisy DIY activity. .
57. The person who the local authority officer believes is responsible for a night noise offence does not have to accept the offer (if made) of discharging liability with payment of the fixed penalty notice, and can choose instead to have the case heard in court. A court may find the responsible person guilty of a criminal offence with a fine upon summary conviction being much higher than that of a fixed penalty notice.
58. It should be noted that measurement of noise is a skilled operation which should be undertaken only by people who are competent in the appropriate procedures. Consequently, local authorities who do not ensure that staff are adequately trained and can demonstrate competence in measurement of noise run the risk of successful legal challenge to any evidence relied upon in prosecutions against those alleged to have committed an offence.
59. The investigation of complaints, the issuing of a warning notice and the issuing of fixed penalty notices are unlikely to be suitable for contracting out, as the Noise Act 1996 specifies that these functions are to be performed by an 'officer of the authority'.

### **Permitted level**

60. The permitted level is determined by reference to the underlying level of noise. The underlying level of noise is indicative of the level of noise that would otherwise be present in the absence of the noise causing complaint. There will be cases where the level of noise complained of is clearly substantially above the level of noise that would otherwise be present and where there will be obvious gaps or lulls in the noise. In such cases it should be possible to assess, by judgment or measurement, that the underlying level of noise is at least 10dB below the  $L_{Aeq, 5min}$  of the noise from the offending dwelling.
61. However, the measurement technique makes it possible to determine the underlying level of noise even if the dominant noise, such as amplified music, appears to be continuous. This can be done, using currently available instrumentation, by the use of a statistical parameter (such as  $L_{A99.8, 5min}$ ,  $L_{A99.5, 2min}$  or  $L_{A99, 1min}$ ) as a proxy for the underlying level of noise.



62. If  $L_{AN,T}$  measurements are to be used to determine the underlying level of noise, the equipment must meet certain criteria with regard to its sampling rate and its method of operation of statistical calculations. It is understood that at the present time, only the instrument manufacturer or their agent can usually supply such information for such instruments.

63. The Approval states that the measurement of the  $L_{Aeq, 5min}$  of the noise emitted from the offending dwelling or offending premises shall be continuous except for pauses to exclude from the measurement any significant noise other than that causing complaint. The measurement must therefore be for at least 5 minutes, but it could be longer should the officer consider it necessary and/or reasonable to do so. The noise emitted from the offending dwelling or offending premises and the underlying level of noise are both to be determined within an overall period of no more than 15 minutes. In other words, there is a moving 15 minute assessment 'window' within which both the noise from the offending dwelling or offending premises and the underlying level should be obtained.

64. Local authority officers should be aware that the measurement procedure may require measurements of relatively low levels of noise. They should also recognise that the noise generated by the approved device itself, including the microphone (i.e., self-noise), will always have the effect of elevating the underlying level of noise to a greater extent than the offending noise. At low levels of noise, the self-noise of the approved device can significantly affect the underlying level, making confirmation of an offence less likely. Approved devices with high levels of self-noise may *not* be appropriate for use where relatively low levels of noise are being measured.

65. To obtain suitable measurements for the purposes of the Noise Act 1996 in situations where underlying levels of noise are around 24 dB(A), it is recommended that the self-noise of the measuring device (including the microphone) should be below 19 dB(A). However, self-noise can exceed this level without significantly affecting the accuracy of measurement at higher sound pressure levels.

#### **The Regulation of Investigatory Powers Act 2000**

66. The Regulation of Investigatory Powers Act 2000 (RIPA) introduced new provisions relating to the carrying out of surveillance and the use of covert human intelligence sources. Part II applies to directed surveillance (section 26(2) of RIPA), intrusive surveillance (section 26(3) of RIPA), and the conduct and use of human intelligence resources.

67. There should be no implications under RIPA with regard to the use by a local authority of approved measuring devices in accordance with the provisions of the Noise Act 1996. Use of measuring equipment is unlikely to

count as surveillance.

68. See the Home Office Covert Surveillance Code of Practice for more information.

## **Section 7 - Court proceedings for the night noise offence: evidence**

69. **Section 7(1)** provides that in proceedings for an offence under section 4 or 4A, evidence –

- (a) of a measurement of noise made by a device, or of the circumstances in which it was made, or
- (b) that a device was of a type approved for the purposes of section 6, or that any conditions subject to which the Approval was given were satisfied

may be given by the production of a document mentioned in section 7(2).

70. **Section 7(2)** states that the document referred to in section 7(1) is one which is signed by an officer of the local authority and which (as the case may be) –

- (a) gives particulars of the measurement or of the circumstances in which it was made, or
- (b) states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied;

and if the document contains evidence of a measurement of noise it may consist partly of a record of the measurement produced automatically by a device.

71. **Section 7(3) and (3A)** states that in proceedings for an offence under section 4 and 4A (in respect of an offending dwelling and an offending premises), evidence that noise, or noise of any kind, measured by a device at any time was noise emitted from a dwelling or premises may be given by the production of a document —

- (a) signed by an officer of the local authority, and
- (b) stating that he had identified that dwelling as the source at that time of the noise or, as the case may be, the noise of that kind.

72. Section 7 does not make a document admissible in evidence in proceedings for a night noise offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence.

73. Furthermore, section 7 does not make a document admissible as evidence of anything other than the matters shown on the record produced automatically by a device if, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, the person charged with the offence serves a notice on the prosecutor, requiring attendance at the hearing or trial, of the person who signed the document.

## **Section 8 and 9 - The fixed penalty**

74. Note: This section covers the basic principles of fixed penalty notices for offences under the Noise Act 1996. However, detailed information on their use is provided in the separate Clean Neighbourhoods guidance available on fixed penalty notices: ([www.defra.gov.uk/environment/localenv/legislation/cnea/fixedenalynotice.s.pdf](http://www.defra.gov.uk/environment/localenv/legislation/cnea/fixedenalynotice.s.pdf)). Authorised officers are strongly advised to consult this guidance when using the fixed penalty notice provisions.

### **Overview**

75. An authorised officer of the local authority can offer a person who they believe is committing, or has just committed, a night noise offence the option of discharging liability to conviction by payment of a fixed penalty notice.

76. Local authorities should be aware of the need to ensure officers are duly authorised to serve fixed penalty notices under section 8(1) of the Noise Act 1996. The keeping of an up to date written record of officer authorisations is a successful method of countering challenges by noise makers on this point in Court actions.

### **Dwellings (section 4 – offence where noise from a dwelling exceeds the permitted level after service of a warning notice)**

77. The level of the fixed penalty under section 8A(2)(a) and (b) of the Noise Act 1996:

(a) is the amount specified by the local authority in relation to the authority's area, or

(b) if no amount is specified, £100

78. Under regulation 2(2)(c) of The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (SI 2006 No. 783), the amount of the fixed penalty which can be specified by the local authority must be within the range of £75 to £110.

79. A person cannot be convicted of an offence if a fixed penalty notice for that offence is paid within 14 days of the date of the notice. Proceedings for an offence must not be instituted within that 14 day period.

80. With regard to an offence under section 4, section 8A(3) of the 1996 Act enables local authorities to make provision for treating the fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the local authority. Section 8A(5)(b) enables the Secretary of State and the National Assembly for Wales to restrict the extent to which, and the circumstances in which, a local authority can make provision for this power. See the Clean Neighbourhoods guidance: ([www.defra.gov.uk/environment/localenv/legislation/cnea/fixedpenaltynotices.pdf](http://www.defra.gov.uk/environment/localenv/legislation/cnea/fixedpenaltynotices.pdf)) on Fixed Penalty Notices for more detail.

81. The person responsible for the noise can refuse the offer of discharging liability to conviction through payment of a fixed penalty, and instead choose to have the case heard before a court.

**Other premises (section 4A – offence where noise from other premises (i.e. premises with a premises licence or a temporary event notice) exceeds the permitted level after service of a warning notice**

82. Section 8A(2A) of the 1996 Act sets the level of the fixed penalty notice in respect of offences involving such premises at £500.

83. The local authority cannot alter the level of the fixed penalty. A local authority does not have to offer the person responsible the option of paying a fixed penalty, and the person responsible does not have to accept the offer of a fixed penalty to discharge liability to conviction.

84. A person cannot be convicted of an offence if a fixed penalty notice for that offence is paid within 14 days of the date of the notice. Proceedings for an offence must not be instituted within that period of 14 days.

**Other premises (section 4A – offence where noise from other premises (i.e. premises with a premises licence or a temporary event notice) exceeds the permitted level after service of a warning notice**

85. Section 8(5) of the Noise Act 1996 provides that a fixed penalty notice must state:

- that proceedings will not be taken for fourteen days following the date of

service of the notice;

- the amount of the fixed penalty; and
- details of to whom and where the fixed penalty sum should be paid.

86. The fixed penalty notice must also give such details of the circumstances alleged to constitute the offence as are necessary to give reasonable information of the offence. This might include the address of the offending dwelling/premises, the date and time at which the warning notice was served and the time at which it came into force, the permitted level and the actual levels recorded. **There is no requirement to include the name or address of the complainant.**

87. The Secretary of State has power under section 9 to specify, by order, the form of the fixed penalty notice in relation to England. However, the Secretary of State does not propose to use this power at present. A form of fixed penalty notice has been suggested by the Chartered Institute of Environmental Health (available from [info@cieh.org](mailto:info@cieh.org)).

#### **Serving of notice**

88. A fixed penalty notice, where given, should be served on the person who the officer believes is committing or has just committed an offence under section 4 or 4A. This should be done either by delivering the notice to that person, or where this is not reasonably practicable, by leaving the notice addressed to that person at the offending dwelling. In relation to offending premises, the warning notice cannot be served by leaving it at the premises (see paragraph 41).

89. By section 8B of the 1996 Act, inserted by section 82(2) of the Clean Neighbourhoods and Environment Act 2005, a local authority may require a person to whom an authorised officer proposes to give a fixed penalty notice to give the officer his or her name and address. Failure to provide that information when asked to do so, or the giving of false or inaccurate replies to such a request, is an offence. A person guilty of such an offence is liable upon summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

#### **Payment of the fixed penalty**

90. Payment may be made by post, although payment by other means is permitted.

91. Where a fixed penalty notice has been issued, but has not been paid within the fourteen day period, the local authority may decide to take proceedings against the person responsible. By section 9(5), evidence that the fixed penalty was, or was not, paid before the end of the fourteen days may be

given to the court in the form of a certificate. This should state that such payment was, or was not, received within the required period and should be signed by, or on behalf of, the person having responsibility for the financial affairs of the local authority.

#### **Use of fixed penalty notice receipts**

92. As a result of the amendments made to the Noise Act 1996 by the Anti-social Behaviour Act 2003 (s.42(1) and (3)), introducing new s.9(4)-(4F) 1996 Act), a local authority may retain the sums it receives in respect of fixed penalty notices for night noise offences, for use on its 'qualifying functions'. All local authority functions under the Noise Act 1996 are 'qualifying functions'. In addition, section 83(2) of the Clean Neighbourhoods and Environment Act 2005 adds to the list of qualifying functions the functions under Chapter 1 of Part 7 of that Act (powers to deal with intruder alarms) and the functions under sections 79 – 82 of the Environmental Protection Act 1990 relating to statutory nuisance from noise (sections 79(1)(g) and (ga).

93. Section 83(3) of the Clean Neighbourhoods and Environment Act 2005 inserts new subsections (4G) and (4H) into section 9 of the Noise Act 1996 Act. Section 9(4G) of the 1996 Act states that the powers to make regulations under section 9 of the 1996 Act regarding qualifying functions and the use of fixed penalty receipts are to be regarded for the purposes of section 100(1) of the Local Government Act 2003 as included under section 100(2) of that Act. This will have the effect of permitting the Secretary of State to take into consideration the performance of a particular local authority, or local authorities in general, when making regulations for the use of fixed penalty notice receipts. (Section 100 of the Local Government Act 2003 applies to local authorities in England only.)

#### **Supply of information relating to the use of fixed penalty notices**

94. Under section 9(4C) of the 1996 Act a local authority shall supply the Secretary of State with such information relating to its use of fixed penalty receipts as the Secretary of State may require.

95. Defra sends out relevant forms to be completed on an annual basis. These forms seek information for fixed penalty notices issued for litter, dog fouling, graffiti and fly posting offences. Completed forms should be sent to: Local Environment Protection, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR.

96. Alternatively, returns may be set out in an electronic table or spreadsheet clearly labelled as 'night noise data', and sent by email to: [local.environment@defra.gsi.gov.uk](mailto:local.environment@defra.gsi.gov.uk), stating in the subject line 'Offence Name Penalty Returns & the name of the local authority', where the

Offence Name is 'night noise'.

97. In addition, the Chartered Institute of Environmental Health collects some data on the use of fixed penalty notices in the course of its annual collection of noise statistics from local authorities.

#### **Further offences (section 9(2) and 9(2A))**

98. There may be circumstances where a fixed penalty notice has been served on an individual in respect of a night noise offence, but that person continues to be responsible for noise above the permitted level during the same night hours period.

99. If a fixed penalty notice is given to a person in respect of noise emitted from a dwelling or other premises in any period specified in a warning notice, a further fixed penalty notice **cannot** be served within that period (the specified period always ends at 7am). However, that person may be **convicted** of a further offence under section 4 or 4A in respect of noise emitted from the dwelling or premises after the fixed penalty notice is given and before the end of the period specified in the warning notice.

## **Section 10 - Seizure, Retention and Forfeiture Overview**

100. Section 10 of the 1996 Act together with the Schedule provides the powers which are available to a local authority to deal with offences committed under the Noise Act 1996. The powers include a power to seize and remove any equipment which it appears to the authority is being or has been used to commit a Noise Act offence or create a statutory nuisance by virtue of section 79(1)(g) of the 1990 Act.

### **Seizure**

101. Where an officer of a local authority has reason to believe that following service of a warning notice under section 3 of the Noise Act 1996 the noise emitted from the premises has exceeded the permitted level during the period specified in the notice, that officer or another person so authorised may enter such premises and may seize and remove the noise-making equipment responsible.

102. Noisemaking equipment will typically comprise electronic items such as a HiFi, mixer desk, loudspeakers, TV, DIY equipment, and musical instruments such as drum-kits, keyboards or guitars and their amplification.

103. The Noise Act 1996 seizure powers are not intended to cover noisy animals such as barking dogs.

104. The person carrying out the seizure must produce their authority to do so, if required.

105. In some cases, alerting the person responsible to the intention to gain access to the premises could defeat the reason for entry – that is to seize the noise-making equipment. Alternatively, entry to the premises may be refused when an approach is made following the exceeding of the permitted level, or such a refusal may be anticipated.

106. In such cases, where a Justice of the Peace is satisfied that the correct procedures have been followed (see section 10(4) for conditions of warrant being issued) they may issue a warrant permitting the local authority to gain access to the premises, if necessary by force. A warrant remains in force until such time as the equipment has been seized, or until the purpose for which entry is required has been satisfied.

107. Where it is necessary for entry to be made, a person exercising a power of entry in section 10(2) may take with them such equipment and persons as necessary to gain entry to the premises. On leaving unoccupied premises, the officer must leave them in as secure a state as prior to their gaining entry.

Where a local authority is taking action under Part III (see section 81(3) and schedule 3) of the Environmental Protection Act 1990 as extended by the Noise Act 1996, they may seize and remove noise-making equipment to abate the noise nuisance and do whatever may be necessary in the execution of the notice. A warrant for entry may be sought by the local authority on application to a Justice of the Peace where –

- entry is refused or refusal is apprehended, or
- the premises are unoccupied, or
- the occupier is temporarily absent, or
- if the case is one of emergency, or
- an application for admission would defeat the object of entry,

and there are reasonable grounds of entry into the premises for the purpose of taking any action, or executing any work, authorised or required by Part III of the Environmental Protection Act 1990 (statutory nuisances). Thus a warrant for entry may be sought in order to seize any noisemaking equipment where a statutory nuisance is on-going or likely to recur.

108. It should be noted that (except in emergency) there is a requirement to provide 24 hours notice of intention to enter premises used wholly or mainly for residential purposes to carry out seizure without a warrant, although entry as of right is permitted for authorised officers at any reasonable time for all other premises when taking action under Part III of the Environmental



Protection Act 1990. (**This requirement does not apply where seizure is being carried out with regard to equipment used in the commission of an offence under the Noise Act 1996.**)

109. Any person who wilfully obstructs a person (whether or not they have a warrant) who is attempting to enter premises or seize noise-making equipment under section 10(2) of the Noise Act 1996 or section 81(3) of the Environmental Protection Act 1990, can be liable for a fine up to level 3 on the standard scale (currently £1,000).

### **Protection from personal liability (section 12)**

110. Section 12 provides protection from personal liability for any member of, or an officer or other person authorised by, the local authority when carrying out in good faith their duties under the Noise Act 1996.

## **Schedule 1 - Retention, forfeiture and disposal**

### **Paragraph 1**

111. The Schedule outlines the powers for the retention, forfeiture and disposal of seized noise equipment. Paragraph 1 defines a number of terms which are used in the Schedule.

112. **Noise offence** – means –

- (a) In relation to equipment seized under section 10(2) of the Noise Act 1996, an offence under section 4 or 4A of the Act
- (b) In relation to equipment seized under section 81(3) of the Environmental Protection Act 1990 (as extended by section 10(7) of the Noise Act 1996), an offence under section 80(4) of the 1990 Act in respect of a statutory nuisance falling within section 79(1)(g) of that Act.

113. **Seized equipment** – Equipment seized in accordance with section 10(2) of the Noise Act 1996 or section 81(3) (as extended) of the Environmental Protection Act 1990.

114. **Related equipment** – In relation to any conviction or proceedings for a noise offence, equipment which has been seized having been used or alleged to have been used in the commission of an offence.

115. **Responsible local authority** – The local authority by or on whose behalf the equipment was seized.

116. It should be noted that section 10(2) of the Noise Act 1996 is widely phrased to cover any equipment which it appears to the officer is being or has been used in the emission of the noise.

**Retention (Schedule, Paragraph 2)**

117. Any seized equipment may be retained by the local authority for a period of twenty eight days from the date on which it was seized. Where information has been laid to initiate proceedings for an offence within that period of twenty eight days, related equipment may be held until the person is sentenced or otherwise dealt with for the offence, or acquitted of the offence, or held until a case is discontinued.

118. However, where a person whose equipment has been seized was served with a fixed penalty notice for the same offence and has paid the fixed penalty within the time allowed, the seized equipment must be returned.

**Forfeiture and Disposal of Forfeited Equipment (Schedule, Paragraphs 3 and 4)**

119. Where a person has been convicted of a noise offence the court may make a forfeiture order for any related equipment. Such an order can be made whether or not the offender is dealt with in any other way by the court.

120. When considering whether to make a forfeiture order the court must take account of the value of equipment to be forfeited and the likely financial and other effects on the offender if such an order is made. In cases where the court does take the decision to make a forfeiture order the offender is deprived of any rights in that equipment.

121. In some cases, it may be that equipment which has been the subject of a forfeiture order is the property of someone other than the person in whose case the forfeiture order was made. In these cases the legislation provides that the local authority should take reasonable steps to bring the matter to the attention of anyone who might be the owner.

122. Where a claimant applies for the equipment, the court must be satisfied that he is the owner and that either he did not consent to the offender having possession of the equipment, or did not know or have any reason to suspect that the equipment would be used in the commission of a noise offence. Where the court is satisfied on these points it may order the return of the equipment to the owner. Any claim with regard to ownership of the equipment must be made within six months of the date of a forfeiture order being made.

123. Paragraph 4(5) also provides certain additional rights for third parties.

124. The purpose of this provision is to provide protection for owners who were not aware and who had no reason to suspect that their equipment would be used in the commission of an offence. An example of such a situation could be where the owner of the equipment is a leasing company.

125. A local authority must retain the equipment for the period of six months from the date on which a forfeiture order is made. However, if no order for return of the equipment has been made at the end of the six month period from that date, the local authority may dispose of the equipment.

**Return and Disposal of seized equipment (Schedule, Paragraphs 5 and 6)**

126. If, in proceedings for a noise offence, no forfeiture order is made, a court may give directions as to the return, retention or disposal of seized equipment. This provision applies whether or not the person is convicted of a noise offence.

127. There may be cases where equipment is seized, but proceedings for an offence to which it is related have not begun within the specified 28 day period. In these circumstances, the local authority has a duty to return the equipment, to any person who appears to them to be the owner of the equipment and who makes a claim for its return within a six month period from the end of the period of 28 days after seizure of the equipment. If no claim is made within that same period, the local authority may dispose of the equipment. Whilst holding seized equipment, the local authority must make reasonable attempts to bring to the attention of persons their right to make a claim for the equipment.

128. In such cases, before returning seized equipment to the person making a claim for its ownership, the local authority can require that person to pay reasonable charges for the seizure, removal and retention of the equipment. Charges cannot be levied where the authority are satisfied that the person claiming the equipment did not know, and had no reason to suspect that the equipment would be used to emit a noise in excess of the permitted level.

129. The legislation enables an owner to make a claim within a year of a local authority having sold seized equipment in one of the circumstances described above. The local authority must pay any proceeds of sale in excess of reasonable charges for the seizure, removal and retention of the equipment, to the owner of the equipment. Again, if the local authority is satisfied that the owner did not know, and had no reason to suspect that the equipment would be used to create a noise offence, administrative charges cannot be made.

## Resource Implications for local authorities

130. The financial implications for those authorities which choose to use the Noise Act 1996 will vary according to the level of noise service they currently provide. For those authorities which have already chosen to provide a partial or comprehensive night time noise service within existing resources, there will be little by way of additional cost. The measures covered by this guidance do not place any new duties on authorities but give them the flexibility to take action to deal with local issues.
131. Resource implications could include the following:
- the costs of staffing the service,
  - the costs of staff training in noise measurement,
  - transportation costs,
  - costs of personal safety equipment and training for staff engaged in providing the service,
  - communication costs e.g. mobile phones, radios and pagers,
  - management and administrative costs of providing and supporting the service,
  - costs of enforcement, seizure and storage of noise making equipment.
132. However, to maintain their existing cost structure in these areas, local authorities only offering Mon-Fri office hours coverage would need to justify maintaining the status quo. Any current decision not to offer an out-of-hours service, or at least an out-of-hours service at key times of the week or year, should be based on an assessment of local needs. Most noise problems almost by definition occur at night, outside office hours.
133. Additional funding may be available should a local authority include a 'stretched' target for noise services as part of its Local Area Agreement (LAA) Reward Element.
134. The LAA Reward Element carries on from the Local Public Service Agreements (LPSAs) that have been in operation since 2000, whereby top-tier authorities negotiated a package of around a dozen or so 'stretched'

targets with Government. These 'stretch' targets required authorities to consider their performance in service areas over a three year period, then commit to deliver an enhancement in performance beyond that, for which the authority would receive a Performance Reward Grant were it successful. To assist in this delivery, the authority received a Pump Priming Grant to spend as it wished in pursuance of the reward targets.

135. These same principles of 'stretch', Performance Reward Grant and Pump Priming Grant continue within the LAA Reward Element, the difference being that such targets are now negotiated as part of the LAA process by the relevant Government Office.

136. In some cases, local authorities undertaking seizure of noise-making equipment will be able to recover costs of seizure and storage from the equipment owner upon return, or by sale of equipment not claimed. In addition, use of the 1996 Act may be a more cost-effective alternative to evoking powers under the statutory nuisance regime of the Environmental Protection Act 1990.

## Closure powers under the Licensing Act 2003 and the Anti-social Behaviour Act 2003

137. Section 161 of the Licensing Act 2003 enables senior police officers to close licensed premises for up to 24 hours on the grounds of public nuisance (a common law term that has not been defined in statute law) caused by, for example, noise coming from the premises where this is necessary to prevent that nuisance, or where there is, or is 'likely imminently to be', disorder on, or in the vicinity of and related to the premises, and their closure is necessary in the interests of public safety.

138. The police also have the power to seek a review of a licence, along with other licensing authorities (such as local authorities) with the possibility of a revocation of a licence.

139. Under the Anti-social Behaviour Act 2003, sections 40 and 41 enable the Chief Executive of a local authority to order the closure of licensed premises for up to 24 hours on the grounds of public nuisance caused by, for example, noise coming from the premises where closure is necessary to prevent that nuisance.

140. If licensed premises stay open during the 24 hour closure period ordered under the Licensing Act 2003 or the Anti-social Behaviour Act 2003, there is

a maximum penalty upon summary conviction of a three month prison sentence, a fine of £20,000, or both.

141. Guidance to police officers on the operation of closure powers under the Licensing Act 2003 has been issued by the Department for Culture, Media and Sport, and this includes guidance on the closure of licensed premises under the Anti-social Behaviour Act 2003.
142. Local authorities may wish to seek the cooperation of the police when closing licensed premises under the Anti-social Behaviour Act 2003. The Chartered Institute of Environmental Health's Noise Liaison Guide provides good practice guidance for cooperation between local authorities and the police ([info@cieh.org](mailto:info@cieh.org)).
143. Although 'public nuisance' is not defined in statute for the purposes of the Licensing Act 2003 or the Anti-social Behaviour Act 2003, it is generally taken by the courts to be a nuisance which affects the public at large where it would not be reasonable to expect an individual to take proceedings to resolve the matter, although a local authority should seek its own legal advice when considering using these powers.

## British Standards

144. British Standards are referred to in the Directions and Approval. Copies of British Standards are available from the British Standards Institute, 389 Chiswick High Road, London W4 4AL.

## Other Relevant Documents

145. The following leaflet is available free of charge:

(a) *Noise – Guidance on Sections 69 to 81 and Section 86 of the Clean Neighbourhoods and Environment Act 2005* – available at [www.defra.gov.uk/environment/localenv/legislation/cnea/noise.pdf](http://www.defra.gov.uk/environment/localenv/legislation/cnea/noise.pdf)

Copies are also available from:

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