

a [REDACTED] with the band playing. The measured noise level matched those measured previously in August 2017 and October 2018.

14. I was contacted by Mr Leslie Kwarteng in February 2019. He asked if I could attend a demonstration of a new sound system. I was told that they had been using a hired sound system and now wanted to install a permanent solution.

15. I visited 100WS on 5 March 2019 to see the new temporary sound system in operation. I was asked for my thoughts on the system. I said that it certainly provided more clarity than the previous system and it appeared louder (at the same measured level) than the previous system. But I said that without accessing the apartments above I could not definitively say whether it would resolve issues experienced before.

16. A further sound limiter test with the new sound system in place was arranged for 2 May 2019. Once again I attended with Ms Tamara Al-Obaidi and [REDACTED] provided access to [REDACTED] and arranged with the concierge for access to other apartments as required.

17. 100WS engaged the services of a 5-piece live band including a drummer, bass guitarist, keyboards and vocalist. The band played music at the maximum level via the sound limiting system. An assessment was made by [REDACTED]. Initially she advised that vocals and music noise could be heard. Some adjustments were made to the sound limiter settings over an extended period of testing. This included reducing the bass input levels. Eventually a level was reached where music and bass noise was inaudible within [REDACTED].

18. Ms Al-Obaidi went to the [REDACTED] to assess the music noise level from [REDACTED]. The assessment was made difficult by demolition works carried out to a building to the rear of Soho Lofts and also internal refurbishment works at an apartment in Soho Lofts.

19. At this stage the visit had lasted for around three hours and it was agreed that there was little likelihood of completing the exercise given the noise from building works

20. It was agreed that a further test would be required to ensure the apartments at 1<sup>st</sup> floor level were adequately protected from the impact of music noise in 100WS. In the light of the difficulties with construction noise it was felt that this should be done during the evening period. It is hoped that this can be arranged in the very near future.

## Exhibit A

### Crockford, John: WCC

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**From:** Crockford, John: WCC  
**Sent:** 01 September 2017 16:16  
**To:** Leslie Kwarteng; Lucy Lloyd  
**Cc:** Jellis, Nigel: WCC; Neil Jarman  
**Subject:** Sound limiter settings at 100 Wardour Street

Dear Leslie,

Following on from the measurement data kindly provided by Neil Jarman of Cole Jarman Associates, I just wanted to confirm with you the maximum permissible music noise levels. In the basement area the music noise levels were increased by around 4 dB from the previous limit set to **97 dB L<sub>Aeq</sub>**. This is as measured around 5m from the stage area. It should be noted that music levels away from the stage area were significantly lower such that they were merely at background music level in the restaurant area to stage left.

The music noise levels in the ground floor restaurant area had to be reduced quite significantly in some areas. The sound insulation between the restaurant and the residential apartments above is quite poor towards the rear of the restaurant, in particular the area of the billiard room. As a result the maximum music noise level in the billiard room is **75 dB L<sub>Aeq</sub>**. The area close to the DJ booth has been reduced to **81 dB L<sub>Aeq</sub>** and the area adjacent to the bar speaker to **86 dB L<sub>Aeq</sub>**. Both the DJ booth and bar speaker measurements are taken around 5m away from the music noise source.

One area of the premises which was not tested as it was being used by patrons at the time is the atrium. I just wanted to remind you that it is important that music noise levels in this area are thoroughly controlled. Historically with the previous operator there had been issues with music noise leaking through the atrium roof. I am aware that a DJ was set up in this area at some point since the noise limiter setting. I would say that this type of activity is inappropriate without further testing to confirm acceptable music noise levels.

Thank you for your co-operation in this matter.

Best regards

**John Crockford**  
Environmental Health Enforcement Officer (Acoustics)  
Crossrail & Environmental Sciences  
City Management & Communities  
Westminster City Council  
22nd Floor  
Portland House  
Bressenden Place  
Victoria  
London  
SW1E 5RS  
Tel: 020 7641 3130  
Mondays to Thursdays only



## Exhibit B

**Crockford, John: WCC**

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**From:** Neil Jarman <neil.jarman@colejarman.com>  
**Sent:** 12 October 2017 17:22  
**To:** 'Lucy Lloyd'  
**Cc:** Crockford, John: WCC  
**Subject:** 100 Wardour Street - Sound Test 12th October 2017

Lucy,

I write to report the results of the sound tests carried out today in conjunction with Westminster Environmental Health Department, John Crockford.

### Ground Floor area under glazed roof

The sound level upon first arrival was set as background music only and so clearly acceptable. The sound level was increased to 86dB LAeq, found to be too high and then gradually reduced to a level of 80dBA found to be acceptable (inaudible as music) in the flat listened from.

The sound spectrum was as follows:

Location	dB LAeq	dB Leq @ octave band centre frequency (Hz)							
		63	125	250	500	1000	2000	4000	8000
Beneath glazed roof	80	61	77	77	75	77	71	66	64

The sound readings were made using a Norsonic 118 precision sound level meter. The meter was calibrated before and after the survey with a Norsonic type 1251 calibrator and found to have drifted by an insignificant 0.1dB.

Regards

**Neil Jarman** Director  
**Cole Jarman**  
Head Office  
t +44 (0)1932 829007  
www.colejarman.com



Address Details: Head Office | Manchester Office

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## STATEMENT OF WITNESS

(CJ Act 1967, s9; MC Act 1980, ss5A(3) (a) and 5B, Criminal Procedure Rules 2005,  
r27, 1(1))

Statement of : **Sarah LUTAAYA**

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

Occupation of Witness : **Environmental Health Enforcement Officer**

Address and Telephone Number:

**100 Wardour Street  
London  
W1F 0TN**

**Tel: 020 7641 4555**

This statement, consisting of 2 page(s) each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed: ....

**Dated: 11<sup>th</sup> May 2019**

I am Sarah Lutaaya, I am employed by the City of Westminster as an Environmental Health Enforcement Officer since March 2002. I hold a Master of Science Degree in Environmental Health and a Diploma in Acoustics and Noise Control. I have worked as a Noise Enforcement Officer for Westminster for seventeen years.

On Thursday, 25<sup>th</sup> October 2018, three noise complaints were received regarding loud bass music emitting from 100 Wardour Street. Mr [REDACTED] contacted the Noise Team at 22:26 hours. I spoke to him at 22:57 hours, he told me that the music was very loud, however, he did not require a visit but requested me to speak to 100 Wardour street. At approximately 22:52 hours, [REDACTED] logged his complaint; I spoke to

Signed: ....

## STATEMENT OF WITNESS

(CJ Act 1967, s9; MC Act 1980, ss5A (3) (a) and 5B, Criminal Procedure Rules 2005, r27, 1(1))

### **Continuation of statement of: Sarah Lutaaya**

him at 2334 hours and he agreed for the Noise Enforcement Officers to visit his premises. The last call was from [REDACTED] at 23:19 hours, who was not keen on a visit. On arrival to Soho Lofts, 10 Richmond Way; during the early hours of Friday, 26<sup>th</sup> October 2018, in the ground floor foyer, standing near the lift, heavy bass could clearly be heard. Whilst on the [REDACTED]; heavy bass music could be heard in the living area and bedroom. It was intrusive and would have been difficult for an average person to have a quiet enjoyment of their premises or sleep. In my opinion the noise witnessed constituted a statutory nuisance as defined by section 79(1) (f) of the Environmental Protection Act 1990. Through my investigations, I identified 100 Wardour Street as the source of noise. Spoke to the DPS, Leslie Kwarteng, explained the purpose of the visit. Requested a substantial reduction in the bass level, he spoke to the 'DJ' who complied with the request. We discussed the issue of the sound limiter, he assured me that it was not being bypassed. In addition, he explained that the sound limiter was scheduled to be reset by the Environmental Sciences Team. As there were plans in progress to deal with the matter at hand, a s80 notice under the Environmental Protection Act 1990 was not deemed appropriate. On return to the office, I emailed John Crockford on my findings and concerns as he was due to visit the premises on Tuesday, 30<sup>th</sup> October 2018.

Signed: [REDACTED]

## Events of Note Since License Review

14/6

Sound Test #1

First Test since License Review on Friday Evening with 9 piece band. John Crockford and 2 other officers present.

21/6

Tenant in Loft 28 makes complaint to owner of late night music coming from 100 Wardour. Perhaps significantly the tenant is unaware of any previous history of noise nuisance.

3/7

At approx 2.00 pm loud music audible in [REDACTED]  
Witnessed by David Steele, [REDACTED].  
Confirmed as definitely coming from 100 Wardour.

9/7

16.42

[REDACTED] reports music coming from 100 Wardour

26/7

Sound Test #2

Late night test focused on Loft 38 with Live Music.

Huge increase in volume noticed and Sound Levels reduced to a nominal value of 95dB.

No official limit given.

Difficulty to now use drum kit and further test planned. John Crockford present.

Question of how it was possible for music level to increase so significantly since last test.

In Test #1 time ran out before 38 could be visited, but sound levels still higher during Test #2.

14/08

Meeting with senior management of D and D restaurants.

David Steele on behalf of the residents,

with David Loewi, Michael Farquhar, and Leslie Kwarteng present.

Friendly and Constructive meeting.

It is agreed to use 3dB 'Buffer' to help ensure music not audible in flats above 100 Wardour.

After this test things improve for most residents but still occasional music problems particularly at weekends.

2/10

Sound Test #3

Short rather hurried Test organised by Anil Drayon.

Sound Limiter set to 94dB.

3dB buffer used.

4/10

Music audible in Loft 35, and Loft 15,

Attempt to report to Noise Team online as advised by Westminster Council.

5/10 Music audible in Loft 35 and Loft 15.

Attempt to report online to Noise Team

Noise Team website crashes whole weekend.

Send screen shots as evidence,  
Residents of  
Loft 25 and 16 both away,

23/10

Sound Test #4

Afternoon Test, first with live music but focused on the DJ set/recorded music.

John Crockford and Gavin Macintosh spend long time in [REDACTED] establishing sound level to make sure music inaudible in flat. Guang Yu Ren is also present as independent witness.

Test goes on much longer than anticipated and volume levels are reduced much further.

Questions of how and why music levels much higher than in previous tests.

Anil Drayon calls at least twice, asking John Crockford to finish test and saying how unhappy 100 Wardour are at the lower volume levels. He is speaking so loudly that John Crockford cannot keep the phone to his ear and we all clearly hear the conversations.

Both 90dB and 91dB are both mentioned as levels 100 Wardour cannot go below by Anil.

John explains the music is still audible and continues with test.

Eventually we get to a level where music is inaudible and test concludes.

We ask what level the Sound Limiter was set to and John tells us 88dB.

We both make a note.

At that time all seem to have forgotten about 3dB Buffer.

25/10

Anil Drayon emails to say Sound Limiter is set to 91dB.

Not 88dB as agreed.

Much confusion why agreed limit is not set.

Residents very unhappy about turn of events.

As we try to find out exactly what happened, any details that do emerge fail to clarify the situation.

We are sent a copy of text message from John Crockford to Euan Mackenzie (working for 100 Wardour) 'Hear from Anil that it was at 97 not 94' which does cause great concern.

Other messages do not make anything clearer, and are contradictory to other information received.

Will enclose John Crockford's message screen shots by separate email.

We still await answers to most of our questions, but will of course update the Sub Committee as we get further information prior to the hearing.

Conclusions/Observations

The Sound Limiters don't function properly.

Since the 2<sup>nd</sup> incident of 3/7 we have asked for an explanation of how they failed.

We have given dates and in some cases exact times of when the limiters failed, but have yet to hear any explanation whatsoever.

Much emphasis was put on the function of the Sound Limiter and the new System at the last hearing.

The new system we were told would provide absolute certainty that the residents would no longer be disturbed.

This has not been the case.

Generally after Test #2 things have improved, but throughout the time period since June various incidents of music disturbance have occurred.

If the system worked there would have been none.

There are huge problems with the methodology and procedures of the Sound Tests.

On a very basic level something is not working.

If Sound Test #4 was necessary, what went wrong in Tests #1, #2 and #3?

If the hearing about to take place on Nov 12 had taken place a month earlier the Licence Committee would have been reassured by all parties other than the residents that the matter had been permanently resolved.

This was not the case.

Last month Test #3 should have ensured music was inaudible, but just a few days later the Noise Team was being contacted.

Why would the Sound Levels observed by Westminster Officers vary so wildly on different days?

We appear to be in a never ending circle of Sound Tests.

We thought the decision of the License Review to adjourn proceedings to give the License holder time to resolve the issues was fair.

However the direction of the Committee to permanently resolve the problems

Has not been followed.

We must be sure that inaudibility has been achieved and that this inaudibility will be maintained permanently, supported by robust conditions on the license.

Stronger action still, should at least be considered.

Regards

David Steele

Dear all,

I am writing to all to give an account of the Sound Test of Wednesday 23rd Oct. David thought it is important to have an independent witness present at the Test and also someone that is used to taking quick accurate notes. I am an architect and [REDACTED], UCL.

I arrived at 1.30pm. After a brief visit to establish the sound from the live music was no longer audible, John Crockford and an acoustic consultant from 100 Wardour St left David's flat.

John later returned with Gavin McIntosh to test the sound levels for the DJ set. Upon entering, they immediately said volume levels were higher in the rest of the building. We all went into David's bedroom, and agreed the music was clearly audible there. John then started a process of asking the restaurant to turn down various elements of the Sound System, in an attempt to find a way to effectively reduce the sound level.

John was in touch with the restaurant through text messages and kept us informed at each stage. Turning off the main DJ monitor drastically improved situation, but 100 Wardour was not very keen to do so. He then experimented with reduced volume levels and turning down other speakers. Eventually after some time, John settled on the solution of reducing the volume levels overall, specifically the main left and right, and turning off completely the ground floor subs.

We then went through another process of fine tuning. During this process, Anil called John twice. I was informed of his name by John and David, but thought he worked for the restaurant. Anil spoke very loudly and was probably unaware there were 3 other people who could hear the conversation very clearly. His voice on the phone repeatedly said, "they have only just been able to play to 90dB". I asked John what that means and why was 90dB important. I assume that the music was playing at around 89dB at the time of our conversation, as Anil made many references

to the restaurant not being happy. He also pressured John to complete the test in David's flat, but John informed him the music was still audible and carried on with the test. We waited whilst John went through further adjustment and exchanged texts with the restaurant. The music finally got to the point where it was almost inaudible and we all agreed that it was on an acceptable level. I asked John what number it was on and he informed me it was 88dB with a general reduction in volume on main left and right, and no sub on the ground floor. Both David and I made a note of this.

The process we all went through was arduous for everyone and we all tried our very best to be fair and reasonable. In previous conversations, David had expressed his concern over the sound consultant from 100 Wardour coming into his home, but he welcomed him in the most cooperative manner and showed good will. Both John and Gavin were patient, professional, and put a lot of work into their efforts to identify the sound level and reducing it. We spent between 2 to 3 hours in David's bedroom and were all happy with the result in the end, simply based on the fact that we found a sound level (88dB) where the music was no longer audible.

I have written down the process John, Gavin, David and I went through, hoping to demonstrate that the final sound level of 88dB was a very considered result after much effort and work from the Westminster sound team. It took a whole afternoon and much work to arrive at this satisfactory level.

I would also like to reiterate that it was absolutely certain that the final sound level was 88dB as I specifically asked John Crockford to confirm this at the end of the test.

Regards,

A solid black rectangular box used to redact the sender's name or signature.

**Annex 9**

**Decision Notice from Hearing dated 16<sup>th</sup> May 2019**

## LICENSING SUB-COMMITTEE No. 5

Thursday 16 May 2019

Membership: Councillor Murad Gassanly (Chairman), Councillor Louise Hyams and Councillor Aicha Less

Legal Adviser: Barry Panto  
Policy Adviser: Kerry Simpkin  
Committee Officer: Georgina Wills  
Presenting Officer: Kevin Jackaman

Relevant Representations: Environmental Health Service, Licensing Authority and Westminster City Inspectors and six local residents, all in support of the review application

Present: Richard Brown (Westminster Citizen Advice Bureau on behalf of the applicants for the review); David Steele, Andy Mackay, Lucinda Mackay, Alan Geeves and Issac Romanov (applicants for the review; Mustafa Abdo (witness for the applicants); Maxwell Koduah and John Crockford (Environmental Health); Roxsana Haq (Licensing Authority); Stephen Walsh QC (Counsel on behalf of the Premises Licence Holder); Elizabeth Southorn and Francesca Burnett Hall, Harris Hagan Solicitors (on behalf of the Premises License Holder); David Loewi, Chief Operating Officer and Deputy Chairman, Michael Farquhar, Operations Director and Leslie Kwarteng, Senior General Manager and DPS, (all on behalf of D&D London Limited and the Premises License Holder, 100 Wardour Limited); Euan Mackenzie, Autograph Technical Audio Engineer (on behalf of the Premises Licence Holder), and Lee Montague, Cole Jarman Acoustic Experts (on behalf of the Premises Licence Holder).

### **100 Wardour, Ground Floor, Wardour Street London, W1F 0TN (“The Premises”) 19/02509/LIREVP**

1. On 1<sup>st</sup> March 2019 an application had been submitted by David Steele, Andy Mackay, Lucinda Mackay, Alan Geeves and Issac Romanov, for a review of the premises licence for 100 Wardour, Ground Floor, Wardour Street London, W1F 0TN (the Premises) on the grounds of prevention of public nuisance. The Premises was situated in the West End within the West End Cumulative Impact Area.

Mr Kevin Jackaman (Presenting Officer) outlined the Application and confirmed that five local residents had applied to review the Premises License and that representations had also been received from Environmental Health Services, the Licensing Authority, Westminster City Inspectors and six other residents. Mr Richard Brown, (Westminster Citizen’s Advice Bureau) was representing residents. The Licensing Officer advised that Late representations had been received from the Applicants, the Environmental Health Service and the Premises Holder on 13 May 2019 and that all documentation had been circulated to all parties.

The Chair advised the Hearing that the Sub-Committee were determined to find a permanent resolution to the concerns and issues which had led to the

Application being made and noted that the problems encountered by residents were historic and still ongoing.

Richard Brown addressed the Sub-Committee and introduced the residents who were present at the Hearing. Mr Brown advised that the residents resided in Soho Lofts and all were long-term residents. He commented that residents acknowledged and fully accepted that Soho was a lively area within the Capital and brought attention to the copious documents which had been submitted to the Sub-Committee. He commented that the late submissions included complaints about noise seeping into Flat 15 on 2<sup>nd</sup> May (page 46 of the supplemental bundle) and a 'timeline' which detailed the public nuisance caused by the Premises since the Application had been made (page 31 of the supplemental bundle). Mr Brown advised that evidence provided by residents included a letter from a Headteacher which raised concerns about noise nuisance and its effects on three young residents (page 21 of the supplemental bundle). Mr Brown advised that a further six residents had submitted representations regarding audio leakage into their flats; five residents had complained about the music and the last resident about crowd dispersal.

Mr Brown advised that residents were adversely affected by the audio spillage from the premises and this issue had caused a nuisance for several decades. This had impacted on residents' daily home life and in particular caused disturbances whilst occupiers were asleep. Music played at the Premises would travel through the structure of the building and reverberate into several residents' flats. He commented that a recurrent pattern had been embedded in which residents would complain to both the local authority and the Premises staff members about the noise nuisance. This would subsequently result in interventions from regulated authorities, the nuisances being witnessed, and then a Section 80 Notice being served when deemed appropriate. Following the above process measures would be put in place to ensure that the noise levels were made inaudible. However, these levels would only be reduced for a period and would then subsequently later return to a volume which would cause public nuisance. Mr Brown advised that the mentioned pattern had led residents to apply for this Review of the Premises License.

Mr Brown indicated that complaints had been made to the Council on numerous occasions about the nuisance and that they had been provided with 'mixed messages' from different Council Services about their concerns regarding the operation of the noise limiter. He advised that Mr Steele had submitted a sound clip to Westminster City Inspectors in December 2018. Environmental Health had responded and acknowledged that there were problems with the noise limiter but in separate correspondence had commented that the noise limiter setting was fine.

The Sub-Committee was advised that regulated entertainment was permitted until 03:00 hrs in the Basement and 01:00 hrs in the Ground Floor at the Premises. Mr Brown commented that music from this part of the building alongside the atrium could be heard in residents' flats and the noise limiter in these vicinities were not functioning. Mr Brown advised that the noise nuisance during the latter part of 2018 had increasingly become worse. During this period the music volume had become much higher and that the music was being played at a later time and increasingly during the latter part of the week. Mr Brown advised that a Section 80 Abatement Notice had been previously served

on the Premises in 2013. However, a spot check was undertaken in 2013 and it was found that the noise limiter at the premises was 'operating in the red'. Environmental Health also carried out a spot check in 2012 and it was found that the noise limiters were discounted on the Ground Floor and disabled on the Basement and were not operating. Mr Brown suggested that an Abatement Notice could have been served again in October 2018. Environmental Health had acknowledged that the noise limiter at the Premises was not being set at an appropriate level and that conditions were being breached.

Mr Brown advised that the efficacy of the noise limiters was of concern and there were numerous examples of when the equipment was not working. He referred to page 67 onwards of the Agenda which contained emails about noise nuisance emanating from the Premises between residents, Council Officers and staff from the Premises. He commented that noise nuisance would occur during the interim in which Council Officers would check the noise limiter and then leave the Premises. There was uncertainty on why disturbance occurred in the interim and whether the noise limiters installed in the Premises were being tampered with or had a technical fault during the mentioned periods.

Mr Brown commented that the Premises License Holder was aware that the noise limiters were instrumental in ensuring that residents were protected from the mentioned nuisance and this was referenced in paragraph 3.22 of the Cole Jarman Noise Statement for the Licensing Hearing (page 148 of the agenda papers). Mr Brown advised that there were reports of nuisance before and after the new sound system was installed. The new sound system was installed on the 18 March 2019 and a complaint about noise was submitted on the 27 April 2019. Mr Brown advised that there were still ongoing issues about noise nuisance.

Mr Brown advised that there had been noise testing in some flats and this included Mr Steele's flat which was located on the 3<sup>rd</sup> Floor. He commented when an inaudible level was achieved in Mr Steele's flat another resident who resided in [REDACTED] had advised that noise could be heard in his flat. Mr Brown advised that there was lack of confidence in whether the new sound system would resolve concerns. Mr Steele also raised concerns of dispersal outside the Premises which had been made by a resident and noted that these concerns also followed the same pattern in which warnings were given, followed by intervention and then concerns returning.

Mr Brown commented on the amount of resources which Environmental Health and other Council Departments had inputted in the Premises. He indicated that residents were also uncertain as to whether the noise nuisance could be resolved and if a permanent remedy could be found.

Mr Brown noted that the License Holder accepted that music should be inaudible in residential flats and commented that the Conditions should be updated. He commented that conditions should be amended and referred to a WCC model condition which stated that the 'No noise generated on the premises, or by the associated plant or equipment shall emanate from the premises nor vibration be transmitted through the structure of the property which gives rise to a nuisance' and commented that the word 'inaudibility' should be retained in the condition. Mr Brown advised the following wording should be included '*is inaudible to neighbouring properties and or give rise to*

*nuisance*' after the sentence 'the structure of the property which gives rise to nuisance'.

Mr Brown suggested that a condition should be included which required the password for the noise limiter to be solely held by the company which installs and maintains the equipment. The current condition enabled the License Holder to retain the password. Mr Brown advised that residents were not concerned what hours of the day music was played at the Premises but wanted the music from the premises to be inaudible. He advised that a condition was being sought to reduce the hours of regulated entertainment at the premises and this was done in order to be assured that music would not emanate from the Premises during later hours.

David Steele addressed the Sub-Committee and stressed that the Premises was based in a building which also had a residential component. He advised that occupiers were part of a close and active community who engaged with their neighbours and celebrated milestones. Mr Steele advised that he had resided in the Soho area for over 23 years and that residents did not oppose regulated entertainment at the premises or when these activities took place but solely wanted to ensure that all music was inaudible in their flats. He commented about the 'intrusive nature' of the audio leakage and advised that the noise spillage could be heard in his, and his neighbours, flats several days of the week.

Mr Steele advised that he had taken the role of a co-ordinator and acted on behalf of other residents. He stated that this position was previously undertaken by a neighbour who had since left and this was due to the nuisance experienced. He commented that the former resident resided in [REDACTED] and that noise was still audible in this dwelling. Mr Steele advised that seven residents had initially supported the application to review the Premise Licence of the establishment and that a further six residents were also in support and had commented that they were experiencing audio spillage in their flats.

Mr Steele advised that his family and other residents had been adversely affected by the noise. He stated that his son had experienced noise nuisance when revising for public exams and his wife whilst she was experiencing the early stages of labour during the late evening and early morning. The Sub-Committee was advised that an elderly former long-term resident was subjected to noise nuisance during the latter part of his life. The resident had been diagnosed with terminal cancer and had since died. Mr Steele advised that this resident had confided that music could be heard in his flat up to 03:00 hrs. He also stated that the resident was unable to give Council officers access to his flat and this was due to his illness. The individual had sought help from Councillors, but none had been forthcoming.

Mr Steele advised that he had extensive experience in sound recording and commented that the professional evidence provided was not fully correct. He referred to the letter from John Warhurst, who was an expert in this field, at page 117 of the agenda papers. This indicated that sound limiters are essentially simple devices that don't change according to the time of day or how many people are present. Mr Steele commented that the proposal to install passive speakers would be inadequate as they were like active speakers and therefore the level of volume of the music would not change. He also advised

that the proposal to install anti-vibration Pads may be inadequate and that he was present during tests. Mr Steele advised that there were up to seven pillars in the vicinity and each were vibrating alongside the walls whilst testing was being conducted. He further commented that the proposal to install other noise limiting devices would cause the whole building to shake. He advised that the structure of the building was one of the contributing factors for noise leakages and that the proposed installations would make matters worse.

Mr Steele advised that the Sound Report from the Premise License Holder was emailed to Environmental Health. Mr Steele stressed that an expert should inspect the buildings and that any assessments on noise leakages must include visits to residents' flats. This would allow occupiers to indicate where noise leakages can be found in their homes. Mr Steele advised that a test was conducted at the Premises by Council Officers on 4 December 2018 and it was advised that the noise limiter should be set at a volume which would prevent the noise volume from increasing. However, he commented on the 13 December 2018 that the Council's noise team had been contacted about audio leakage in residents' flats.

The Sub-Committee viewed video footage which had been recorded on 15 December 2018 and which showed that music could be heard in the vicinity in which the recording was made. Following questions from the Legal Officer, Mr Steele advised that the recording was made from a flat which was located on the 3<sup>rd</sup> Floor and that music could be heard at 19:00hrs. He advised that during the recording a DJ was playing a set on the Ground Floor of the Premises. Mr Steele stated that audio from the Premises Basement was the primary concern. He commented that during the later hours the music base become more prominent and that the audio should have been inaudible from the flat if the sound limiter was in operation. Mr Steele advised that three pictures were taken of amplifiers being brought into the Premises and that this was a breach of the licence condition. He commented that a letter had been received from Harris Hagan Solicitors, the Premises License Holder Solicitors assuring him that concerns would be addressed during the same period.

Mr Steele commented that the Premises was continuously breaching the terms and conditions of their license and advised that music would be played on the Ground Floor of the Premises after permitted hours. It was during these occasions that noise was audible in resident flats. Mr Steele advised that on one occasion it was found that the noise limiters had been removed.

In response to questions from the Sub-Committee, Mr Steele advised that the Premise Licence Holder had not sought advice from him despite his expertise in sound engineering. He commented that all floors of the Premises needed to be visited to ensure a comprehensive assessment of the building structure was made. Mr Steele advised that the Premise License holder had failed to sound proof the building despite advice from their architects and this was due to cost savings. He commented that this had led to the ongoing issues experienced by residents Mr Steele noted that Premise License holder had the same Adviser for 23 years and that matters should have been resolved during this period.

Mr Steele commented that the reports from Environmental Health and 100 Wardour Street conflicted and highlighted that the former had reported that there was noise nuisance from the Premises and these findings repudiated the

evidence by the latter that the sound limiter could not be overridden. He commented that only one of the reports was correct.

The statement from Mr Steele in support of the review application appears at page 25 of the agenda papers.

Andrew Mackay addressed the Sub-Committee and advised that he resided on the 3<sup>rd</sup> Floor of Soho Lofts. He stated that his flat overlooked Wardour Street and that his bedroom was located at the back of the flat. Mr Mackay advised that there were different types of noise and that audio spillage would seep into his bedroom from Wardour Street. The Sub-Committee was advised that a pattern had emerged in which music would peak between the hours of 15:00hrs and 20:30hrs and then later increase in volume during the end of the evening. He speculated that DJs were deliberately increasing the volume during the later hours.

Mr Mackay advised that he had purchased his flat during the mid-1990s and during this period the Premises operated as a 'high end' restaurant and was affiliated with the Conran franchise. He commented that he had not anticipated that site would later be used as a night club in which food was served and dancing permitted. Mr Mackay advised that the 'disco beats' emanating from the Premises were irritating and that his wife had written several letters about the noise nuisance. He further stated that he had not continuously resided in his flat throughout the 2000s but had lived there for the past 7 years and had experienced noise nuisances during these periods. He also highlighted that were number of young children who resided in the flats.

The statement from Mr and Mrs Mackay in support of the review application appears at page 28 of the agenda papers.

Alan Geeves addressed the Sub-Committee and advised that he resided in Flat 21, 2<sup>nd</sup> Floor, Soho Lofts and had lived there since 2001. Mr Geeves advised that he worked in the 'City' and left his home during the early morning and found the noise spillage from the Premises difficult. He commented that the audio leakage had increasingly become worse over the past several years and that attempts to engage with staff members at the Premises had been made. He commented that the Premises would reduce the volume of music when liaised with, however it would not be sustained. Mr Geeves advised that he was a social person and commented that he had become frustrated by the ongoing process of trying to resolve the above concerns.

The statement from Mr Geeves in support of the review application appears at page 33 of the agenda papers.

Isaac Romanov addressed the Sub-Committee and advised that he resided on first floor of Soho Lofts and had occupied his flat for fifteen years. Mr Romanov advised that there were periods in which audio from the Premises was audible in his flat and this would occur when equipment was moved by staff members of the Premises. He stated that columns and walls may act as sound booms and the positioning of equipment would exaggerate the sound. He advised that the noise spillage would return and there was uncertainty as to why this would occur.

The statement from Mr Romanov in support of the review application appears at page 30 of the agenda papers.

Lucinda Mackay, resident [REDACTED], addressed the Sub-Committee and advised that she agreed and supported the submissions which had been made by her neighbours. She advised that letters had been written to the staff members at the Premises about noise spillage; this correspondence was acknowledged, and the music volumes would be reduced. Ms Mackay advised that the latter would not be sustained and would later return to a volume that caused nuisance.

Mustafa Abdo, addressed the Sub-Committee and advised that he was the Maintenance Building Manager for Soho Lofts and was due to move into one of the flats. Mr Abdo advised the Sub-Committee that the above-mentioned deceased resident had regularly complained about the audio spillage from the Premises entering his flat during the early morning and that this would take place between 02:00hrs and 03:00hrs. He commented that the resident had on occasions slept in his office and that other residents had also tried to assist. He advised that a number of residents had approached staff at the Premises about the audio nuisance and commented that noise would be quelled for a few days.

Mr Abdo advised that residents had complained about audio spillage and that staff members at the premises had been advised that noise from the Premises restaurant could be heard on the 2<sup>nd</sup> Floor. He commented that he could hear singing and bass music when he visited his new flat and had concerns about noise nuisance. Mr Abdo advised that he was a parent of a young child and that his wife had health concerns.

The statement from Mr Abado in support of the review application appears at page 35 of the agenda papers.

The Chair thanked residents for their submissions and noted their frustration about the failures to permanently address concerns.

Maxwell Koduah, Environmental Health, addressed the Sub-Committee and provided an outline of the complaints which had been received about the Premises since 2011. He referenced pages 131 to 141 of the agenda papers. Mr Koduah confirmed that a Section 80 Abatement Notice had been served at the Premises in 2013 and highlighted that no complaints had been received about the establishment for 16 months following the Notice. Mr Koduah highlighted that the above period demonstrated that the noise limiters could work when in full operation. He stated that an application to carry out works in the Premises alongside minor variations had been submitted in 2015. These included changes to the Ground Floor and Basement and the supporting pillars so to allow these structures to be covered with noise attenuation materials. These materials were also applied to the lifts which serviced the Mezza and the bar. Mr Koduah stressed the mentioned works had been undertaken to prevent noise spillage.

Mr Koduah highlighted pages 15 and 16 of the Supplemental Agenda papers which contained a statement from a Council Officer in 2018 which stated that noise from the Premises could be heard on the ground floor, foyer and retro lifts and commented that this should not have occurred as this area had been

treated for noise spillage. Mr Koduah confirmed that several complaints had been received from residents in 2018. He commented that some complaints received were related to the den on the ground floor and advised that these areas were licensed. He advised that works should have been undertaken in this area to prevent noise spillage.

Mr Koduah drew attention to page 18 of the Supplemental Agenda papers which listed the variations to the licence that had been proposed by the previous licence holder (Mezzo) in 2015 which had included the application of noise attenuation materials to the pillars, walls and passenger lift. He also commented that deregulation provided for by s177A Licensing Act 2003 would not apply after 23:00hrs. He suggested that Conditions 15,16,17 and 41 on the current licence should be replaced with the current Model Condition on Noise Limiters. Mr Koduah advised that Model Condition 14 should be included and noted that the Condition required that noise should not be audible nor cause a nuisance and suggested that the condition on noise limiters should include 'inaudibility' as one of the requirements. Mr Koduah advised that model conditions 26 and 57 should also be considered by the Sub-Committee.

Following questions from the Sub-Committee, Mr Koduah advised that the level of resources inputted into 100 Wardour Street by Environmental Health was above average and that there had been multiple lengthy visits undertaken to the Premises before 2011.

John Crockford, an Environmental Health Officer employed by the Council, addressed the Sub-Committee and confirmed that there had been several visits undertaken to the Premises and that the first was undertaken 2012. He commented that visits had also been undertaken by Council Officers in 2005 and concerns during this period largely stemmed from the Ground Floor of the Premises. Mr Crockford commented that there were audio leakages in the building and that residents being able to hear words sung indicated that there were issues with the basement, ground floor and den of the Premises. He advised that there was uncertainty on what happens to the sound control mechanism during the interim between visits to the Premises by Council Officers and when they leave. He advised that during visits Officers would conduct checks in both the Premises and resident's flats and that the layout of the building made it difficult to ascertain areas from which noise would leak.

Mr Crockford advised that in 2017 the noise limiter's settings were found to be correct and that music was inaudible in residents flats. The Sub-Committee was advised that 'sound webs' had been installed in the Premises for the past 10 years and should be in operation and a log should be kept when the equipment was not functioning.

The Sub-Committee was advised that there was uncertainty on whether some of the live musical bands performing at the Premises brought their own amplification equipment or whether the amplifiers were being moved into the atrium. Mr Crockford advised that the new PA systems were tested on 2 May 2019 and explained that it would be difficult to set the equipment's variation, and this was due to other noise sources in the vicinity and that a final test was to be undertaken. Mr Crockford advised that Mr Steele's flat was quiet and was measured to be in the range of 28 decibels during the daytime and this was unusual for buildings located in central London.

The statement from Mr Crockford in support of the review application appears at pages 7 to 13 of the supplemental agenda papers.

Mr Koduah advised that the new PA system installation did not include the Den and that this area may contribute to the noise leakages. The Sub-Committee raised questions about 'sound proofing' and queried why some areas of the Premises did not receive this treatment and whether this would have prevented audio leakages. The Sub-Committee was advised that it was too difficult to locate all parts of the building where there were 'sound leakages'.

Roxsana Haq, Senior Licensing Officer, Licensing Authority addressed the Sub-Committee and advised that the Application was supported, and that Environmental Health had confirmed that there was a history of complaints about the establishment. Ms Haq advised that the conditions proposed by both Mr Koduah and the premises licence holder were appropriate.

The Sub-Committee was advised that Officers had acknowledged that there was a 'difference of views' by Council Departments about the mentioned concerns relating to the Premises.

Stephen Walsh QC, (Representing 100 Wardour Street Limited, the Premises Licence Holder) addressed the Sub-Committee and advised that D&D London Limited was the proprietor Company for 100 Wardour Street and had operated at the Premises since 1995 when it was called Mezzo. He confirmed that sound proofing was installed during the above period and that similar works had been applied to other areas of the Premises during subsequent decades.

Mr Walsh advised that a permanent solution was sought by the License Holder and stressed that this position was in the interest of both parties. He commented that the License Holder was aware of the Licensing Sub-Committee's remit and powers. Mr Walsh highlighted that the founder proprietor David Loewi, (Chief Operating Officer and Deputy Chairman) and Michael Farquhar (Operations Director) were present at the Hearing and commented that this demonstrated how committed the License Holders were in ensuring a permanent resolution to the concerns raised by residents. Mr Walsh commented that Euan Mackenzie, (Autograph Technical Audio Engineer) and Lee Montague (Cole Jarman Acoustic Expert) were also present to give expert advice about noise and acoustic matters.

Mr Walsh advised that D&D London Limited was a 'high calibre' License Operator who managed several establishments around the world which were in prime locations. He advised that Mr Leslie Kwarteng (Senior General Manager and DPS) had been acknowledged by the City of London Police for overseeing the 'best venue' in the City of London. Mr Walsh commented that the profile that D&D Holdings was a company which was indifferent to the concerns raised by residents was erroneous and highlighted that the Company had dealt with all issues that had arisen. He stated that it was accepted that there was a history of noise breakouts from the Premises and agreed that this need to be resolved.

Mr Walsh advised that 100 Wardour Street had evolved over the years and now comprised of a restaurant, bar, lounge and these components were spread over the Basement and Ground Floor of the Premises. He commented that from its

inception the Premises had a late license which included music and dancing and that it had operated in a similar capacity for several years. Mr Walsh reiterated that the noise escape issues that had arisen needed to be resolved and that an effective sound limiting device was required.

The Sub-Committee was advised that the pillars had been shaking and sound tests had been undertaken which involved playing loud music and bringing the volume down. He advised that D&D London Limited had researched and identified a sound system which was of a better quality and which could be paired with a noise limiter that could not be overridden. Mr Walsh advised that the noise limiter would be password protected and commented that the Premise License Holder would accept a condition to the effect that the password would be retained by the company which installed the equipment rather than the Licensee. These measures and the Conditions imposed on the licence would ensure that all concerns were resolved permanently.

Mr Walsh advised that it was identified that a new sound system was required at the latter part of 2018 and that there were concerns with distortion. He commented that a temporary sound system was installed on 14 December 2018 following advice from Cole Jarman and this was an upgrade from the previous system. It was planned that a permanent fixture would be installed in 2019. Mr Walsh advised that full system had been fitted in April 2019.

Euan Mackenzie, (Autograph Technical Audio Engineer) addressed the Sub-Committee and provided a summary of the features of the new sound system. His written statement also appeared at pages 25 to 29 of the supplementary agenda papers. Mr Mackenzie commented that the new large subwoofers would reduce the reliance on the speakers located on the left and right of the stage to produce low frequency noise. He commented that these speakers were physically attached to the building and were more likely to cause reverberations. The subwoofers will also be on isolation platforms and this was designed to ensure that they support the isolation from the surface which they are on. He commented that the two loudest speakers were mounted on the left and right of the stage and would have a narrower dispersion than the previous speakers. This would ensure that less of the noise generated is directed behind the speakers and that sound is directed away from the front of the column.

Mr Mackenzie advised that the noise limiters would be password protected and the password would be retained by Autograph. He commented that there would be fewer ways for the limiters to be physical changed. The settings have been set by Autograph and Council Officers and was at a level which would ensure that noise is inaudible in residents flats. The noise limiter was reported to be a 'voltage limiter' and cannot be increased once it reached its peak.

Mr MacKenzie advised that the sound system would not operate if the noise limiters were switched off. The amplifiers had been set in accordance to the settings of the noise limiters and that there were no physical controls on these devices. The newly installed amplifiers were reported to be 'the state of the art' and Mr Mackenzie commented that they were located off stage. The Sub-Committee was advised that live acts and DJs performing at the Premises would have to connect to the sound system and that all sound will be directed via the noise limiters. A total of £80 000 has been invested in the new sound system. The Sub-Committee was advised that Autograph Technology were

experts in audio engineering and worked with a diverse clientele.

Mr Walsh advised that sound testing had taken place on 2 May 2019 and this exercise included Mr Steele's flat. The Sub-Committee was advised that the test had a positive result and were informed that the above exercise needed to be carried out in more flats. He commented that the License Holder was willing to co-operate to ensure that noise limiters were effective in all the 'sensitive' parts of the building.

Mr Walsh advised that the License Holder had co-operated with the Environmental Health Officers to ensure that noise was inaudible in residents' flats and that noise limiters were set at a level which would enable this. He commented that the evidence from the experts and other measures undertaken should eliminate the concerns of residents. The Sub-Committee were advised that there was no evidence or history of live bands bringing their own equipment to the Premises. Mr Walsh advised that the photograph which was referred to earlier where it was suggested that amplification equipment had been brought onto the ground floor had been investigated and it was found that it was a monitor which was used by the DJ to test their own sound levels and that noise level from this equipment would be significantly lower than the noise limiting device. He commented that under the new operations the above could not occur and that all speakers would be linked to the new sound system.

The Sub-Committee noted that that were drums and bongos shown in the photograph and were advised that there was a condition on the license which prohibited such instruments being amplified on the ground floor of the premises.

Mr Walsh referred to page 145 of the Agenda which contained the noise statement from Cole Jarman and commented that the report outlined the consultation which had occurred with the company. Mr Lee Montague (Cole Jarman Acoustic Expert), advised that the sound system had several features which were of a higher specification than its predecessor and that several enhancements had been included to ensure that the anti-vibration from hangers and mounts from the systems to limit noise were improved. He commented that a test had been conducted to ensure that sound was inaudible in residents flats, and that the equipment installed was of a high specification.

Mr Montague advised that the sound limiters system had recently been inspected and confirmed that they were located at the back of house and were kept in a locked room. There are no physical buttons on the limiter device or amplifiers and both were electronically operated and were password protected. Mr Montague advised that all sound routed via the noise limiters would be inaudible if musical devices were not set at an appropriate level.

Mr Montague advised that on 2 May 2019 all areas were tested to ensure that each transfer area was addressed, and these included the Ground Floor, Basement and atrium. He commented that inaudibility was achieved in some flats during the test and that further testing was required to ensure that this occurred in all dwellings. Mr Montague commented that residents had advised that there had been long periods where there had been no noise nuisance and informed that this could be achieved if noise limiter settings were appropriately set.

In response to the Sub-Committee, Mr Montague advised that the sound system was 'hard wired' and the input to the amplifiers and noise limiters were in a locked room and that these devices could not be bypassed as they had no physical controls. The amplifiers and limiters were reported to be located at the 'last point of the system' and had no physical links.

In response to questions from the Environmental Health Officer, Mr Montague advised that noise generated by patrons would have no effect on the volume of music and that the sound system had been designed to direct sound to the main listening area which was the centre of the basement. The Sub-Committee was advised that the music sound would be at a higher volume than general patrons' noise and the main concern was with amplified music. The number of patrons would not affect noise limiters.

Mr Walsh commented about the dispersal of crowds and highlighted that there were several licensed establishments in Wardour Street who operated until 03:00 hrs. He advised that Wardour Street was 'one-way' and had a lot of traffic during the evening. He commented that the Premises had developed a smoking policy which permitted a maximum of three patrons to be in the designated area and this ensured that fire escapes were not blocked. Mr Walsh commented that all queues were supervised by SIA trained staff members. Mr Montague advised that noise limiter devices should ensure sound was inaudible and this would eradicate the need to reduce the hours of regulated entertainment.

Mr Walsh presented the Sub-Committee with a set of Conditions and commented the first condition listed reflected the provisions which had been requested by the Applicant and Environmental Health Officer. He advised that a condition removing the deregulation provisions contained in s177A of the Licensing Act 2003 would be accepted and the request to replace Conditions 15, 16, 17 and 41 had been addressed within the proposed conditions. He advised that it was accepted that 'inaudibility' should be the appropriate condition and confirmed that advice would be sought from Environmental Health. Mr Walsh stated that a condition which required the password for the noise limiter to be held solely by the installers would be acceptable and this measure would safeguard the License Holders from being accused of tampering with the device.

Mr Walsh advised that there was historical evidence that there had been constant engagement with residents. He advised that the DPS would be changed and that a contact number would be provided. A condition to ensure that a dedicated phone number was available at all times would also be accepted.

The Sub-Committee noted that the focus of the review was based on the testing of the new sound system on 2<sup>nd</sup> May 2019 and the proposals put forward by the Premise Licence holder to address the concerns of the residents. The Sub-Committee raised various questions regarding the noise limiters and the long term failure of the License Holder in preventing noise leakages into residential flats and queried whether it could be assured that the remedies proposed would prevent further breaches. The Sub-Committee noted that there were mechanisms for reducing noise levels before the new sound system was in place and these had not been fully utilised.

Mr Walsh advised that the Licensing Sub-Committee could be assured that the

noise limiter will be adhered to and that no further breaches would occur and stressed that this was also in the interest of the Premise Licence Holder. He commented that the viability of business was paramount and that the remit of the Sub-Committee was understood. The Sub-Committee were reminded that D&D London Limited had an excellent track record with engaging with residents and this had been demonstrated at Quaglino's. He commented that the submission of an application to review the premises licence had led the company to refocus and resulted in a substantial investment in the Premises which would ensure that sound was inaudible in resident's flats.

David Loewi (Chief Operating Officer and Deputy Chairman) addressed the Sub-Committee and advised that he had opened Mezzo in 1995 with Sir Terrance Conran. Mr Loewi commented that he was sympathetic to the concerns of residents and advised that he also resided in a 'busy part' of London. He acknowledged that there had been failures and agreed that the concerns of residents should have been resolved. He advised that a similar situation had occurred in another Premises called Quaglino's. He advised that these residents had been consulted and the proposal put forward at the Hearing were implemented and had worked. Mr Loewi confirmed he was personally involved with the consultation alongside Mr Leslie Kwarteng, Senior General Manager and DPS. Mr Loewi commented that a substantial investment had been made and advised that this was an indication on how committed D&D London Limited were in addressing the concerns of residents. Mr Loewi advised that his personal email address would be provided to all residents and an offer to regularly meet with the latter would be made.

Mr Brown advised that the condition removing the deregulation of entertainment so as to ensure that the entertainment was regulated going forward was important and the condition on 'inaudibility' was paramount and should be amalgamated with Model Condition 14. Mr Brown advised that a need for a new sound system was identified in 2018 and commented that noise nuisance was reported after the instalments of both the temporary and permanent sound systems. There were complaints made on 25 October 2018 and on 27 May 2019. Mr Brown advised that the noise test conducted on 2 May 2019 was a positive step but there was still uncertainty on whether noise nuisances would cease. He commented that during 2012 Council Officers had found that the noise limiter had been disabled and altered and that in 2013 a Section 80 Notice had been served on the Premises as the device was operating in the red. The Sub-Committee was advised that the same operators were still in place and there was uncertainty on whether these issues would be resolved.

Mr Brown submitted that the function of the Sub-Committee was to ensure that the Licensing Objectives were met and suggested that the reduction of hours of regulated entertainment may be the only feasible action. Mr Brown commented that the Applicant had failed to provide the Sub-Committee with copies of the dispersal policy, smoking policy and live band policy. This meant, for example, that there was no evidence on what policies were in place to ensure that live bands don't plug-in their own equipment and amplifiers to bypass the new sound system and the processes in place to govern this area. Mr Brown advised that acoustic reports had highlighted the concerns of residents and commented that noise limiters could be easily bypassed and commented that 'it was a matter of trust' on whether measures implemented would suffice.