

Environmental Health Statement

The Environmental Health Section of Neath Port Talbot Council wish to make an application to review the Premises Licence for The Old Surgery, 74 Commercial Street, Taibach, SA13 1LR (Premises Licence Number: PREM-0316), also known as The Surge.

The Environmental Health review application primarily focuses on the failure to promote 'The Prevention of Public Nuisance' Licensing Objective.

The decision to make the review application has not been taken lightly; but it is felt that this is the only remaining option to achieve compliance, and attain ongoing protection for the local residents from excessive noise arising from activities at, and in the vicinity of the licensed premises.

Issues in relation to the premises have been ongoing for many years. Several attempts to resolve concerns amicably with the licence holders have failed, and Abatement Notices have been served and seizures of noise equipment under the Environmental Protection Act 1990 have taken place. Still noise problems continue and the licence holders have failed to achieve sustained compliance.

Complaints extend back as far as 2015; the Premises Licence Holder at the time was a Mr [REDACTED] and since that time the Premises Licence holder has changed. However, Mr [REDACTED] continues to have responsibilities for the building, as he is the sole active director of the company, The Surge Pub Ltd which is named as the landlord in the lease agreement.

Noise Abatement Notices have been served on various operators and Premises Licence Holders, including [REDACTED] in 2016, 2020 and more recently in June 2021, full details are set out below.

Having reviewed the history of complaints in relation to the premises; initially there was a pattern of short term compliance following Local Authority intervention; whether it be Environmental Health, Licensing or Waste Enforcement, but compliance would only last a short duration before complaints would be received again. Noise complaints only ceased following the service of the Abatement Notice in 2020 when the premises had to close due to Lockdown for Covid.

Complaints in 2021 regarding noise from the premises commenced almost as soon as the premises opened under the new management and Premises Licence Holder after Covid restrictions within the hospitality sector were relaxed. Environmental Health received complaints of excessive music emanating from the premises. An announced visit to the premises was made by Environmental Health and Licensing on the 3rd June 2021 to discuss the noise complaints and Covid controls. The Premises Licence Holder and Manager sent a representative to the visit and advice was given about the volume of jukebox noise and the scheduled band due to play on the following Sunday (6th June 2021). During the visit Environmental Health discussed that music levels were likely to need to be quieter than ordinarily due to the need to ventilate premises for Covid and offered advice regarding regular checks around the perimeter of the premises. The visit was followed up in writing to the Premises Licence Holder and the Manager (Appendix 1).

On the following Monday morning (7th June 2021) Environmental Health received reports of excessive noise and a number of sound recordings and videos of excessively loud music from a band playing in the beer garden had been sent in (Appendix 2). On the basis of the evidence provided it was concluded that the noise amounted to a Statutory Nuisance and Noise Abatement Notices were served on the 8th June 2021 by post and copies sent by email (Appendix 3). The notices were served on the new Premises Licence Holder and the Manager.

On the 13th June 2021 an Environmental Health Officer visited and witnessed loud music emanating from the premises and a warning letter was sent on the 17th June 2021 to the Premises Licence Holder and the Manager informing them that it was a likely breach of the abatement notice. The letter also informed them that further action would be taken if more breaches were witnessed and recommended immediate steps. This letter was sent by post and emailed. (Appendix 4)

On the 20th June 2021 an officer of Environmental Health visited the premises and there was loud music playing again despite numerous previous warnings. On this occasion he witnessed the noise from within a neighbour's property and was satisfied that it was a Statutory Nuisance and therefore a breach of the Abatement Notice.

The officer's witness statement (Appendix 5) included the following descriptions:

- *The noise was exceptionally loud and could be heard clearly from the street.*
- *Music was clearly audible and intrusive within the domestic property.*
- *I noted the intrusiveness of the bass guitar and drum sound into the property.*
- *The music was intrusive in each room of the domestic property.*
- *Recorded music was being played to the front of the venue. The level of the recorded music was quieter than the band, but still loud.*
- *The sound from the speaker (that had been brought out into the beer garden) was clearly audible in the living room.*

In addition to the excessive music during the event causing a nuisance; what was witnessed by the officer also raised 'public safety' concerns, particularly in terms of Covid controls and current restrictions. With the excessive volume of the music, customers would need to shout in order to communicate with each other, and naturally come closer together in order to be heard.

It is accepted that the officer had limited view of the activities on the premises, but there was very little seen to suggest clear or obvious Covid controls being implemented at the event.

Following the live music element of the event, recorded music was being played from speakers into the beer garden at a volume where it continued to be intrusive within the domestic property. Covid restrictions at the time only permitted recorded music to be provided at background level. Further demonstrating the operator's poor attitude towards complying with rules and regulations.

Environmental Health have also been provided videos of patrons appearing to take illegal substances in the carpark of the premises in plain view of the road, the videos have been forwarded to Licensing and Licensing Police, raising further concerns about a failure to promote the licensing objective "the prevention of crime and disorder".

On the 27th June 2021 an Environmental Health Officer visited the area during a live music event. He witnessed loud music emanating from the premises which was again a breach of the Abatement Notice. The officer described being able to clearly determine what song was being played at the furthest end of the street. The officer spoke with the DPS [REDACTED] who said that he had just carried out a perimeter check but the officer pointed out that he could clearly hear the music some distance from the premises and the reason for the check was to take corrective action which clearly had not taken place. It seemed [REDACTED] did not remember the officer and that they had previously had similar conversations about noise controls, the officer felt that [REDACTED] was not being sufficiently proactive in his role as DPS during this event.

On the 30th June 2021 a warrant was executed to seize noise making equipment and to abate a statutory noise nuisance. During this 4 speakers were removed from the premises.

There have been applications and changes of Premises Licence Holders and DPS in the course of Environmental Health's involvement with the premises which has resulted on numerous Abatement Notices served on various persons identified as those responsible for the noise. A list of notices is included below and copies of each notice are provided in (Appendix 6)

1. 16th November 2016 - Noise Abatement Notice – [REDACTED]
2. 16th November 2016 – Noise Abatement Notice – [REDACTED]
3. 14th August 2020 – Noise Abatement Notice – [REDACTED] (Owner and sole director The Surge Pub Ltd)
4. 14th August 2020 – Noise Abatement Notice – [REDACTED] (PLH)
5. 8th June 2021 – Noise Abatement Notice – [REDACTED] (PLH)
6. 8th June 2021 – Noise Abatement Notice – [REDACTED] (Appointed Manager)

Mr [REDACTED] who owns the premises and is the sole director of The Surge Pub Ltd, has maintained a constant role throughout initially as the DPS but following service of the 2016 Abatement Notices he transferred this role to [REDACTED] who is the existing DPS for the premises, a door supervisor and more recently the Premises Licence Holder.

Mr [REDACTED] made an application to the Local Authority to have the abatement notice that was served on him removed because he did not feel he was responsible for what happened at the premises, stating that the tenants are responsible for the premises and any noise. This request was denied as it was concluded that he has ultimate control over what his tenants do in the premises by way of enforcement of the tenancy agreement.

On the 7th July 2021 Environmental Health were notified by Licensing that they had been contacted by Mr [REDACTED] requesting to make an application to transfer the Premises Licence into his name, thereby removing the current recipients of Noise Abatement Notices from the premises. This change was granted on the 12th July 2021.

On the 13th July 2021, Licensing, Environmental Health and the Police Licensing Officer visited the premises to discuss with the new Premises Licence Holder the previous issues that had occurred at the premises. During the meeting [REDACTED] was understanding of the issues and talked of wanting to sort the premises out and resolve the issues, however, complaints were received from a resident about loud patron noise after the licence hours on the 17th and 18th July 2021, the following weekend.

In summary the changes of Premises Licence Holder and DPS are as follows;

20/11/2015 - TRF and DPS Change to [REDACTED] Licence holder and [REDACTED] as DPS

18/11/2016 - DPS Change from [REDACTED] to [REDACTED] ([REDACTED] remain licence holder)

25/07/2017 - DPS Change from [REDACTED] to [REDACTED] ([REDACTED] remain licence holder)

16/03/2020 - TRF and DPS Change [REDACTED]

24/04/2021 - TRF into [REDACTED]

5/5/2021 - DPS Change [REDACTED]

12/7/2021 – TRF to [REDACTED]

It is suspected that such changes occur because Abatement Notices are served and/or enforcement action happens on those identified as responsible persons at the time of the nuisance occurring, meaning that as applications are granted for new Premises Licence Holders the process of witnessing a nuisance and serving Abatement Notices must start again. This causes stressful and distressing delays for local residents who have had to suffer ongoing and sustained problems with noise nuisance from the premises. It is for this reason that Environmental Health are of the opinion that clear conditions on the premises licence relating to public nuisance and noise will provide a clear understanding to anyone involved in the premises as to what is acceptable and permitted.

The primary concern for Environmental Health is the repeated issue of excessive music emanating from the premises; this relates to indoor and outdoor music, both live and recorded format.

Live music in particular is causing difficulty for Licensing to control because of the provisions of the Live Music Act 2012. However, live music is a regular occurrence at this premises and is being conducted in a completely uncontrolled and irresponsible manner. One event on the 6th June 2021 took place in the beer garden of the premises and was excessively loud. This was outside of the boundary of the premises licence which currently just relates to the building footprint despite live music and speakers being played to patrons in the beer garden on a regular basis.

It is felt that the structure and location of this premises is not suitable for the type of entertainment the licensee wishes to provide. The premises is surrounded on all sides by residential properties the closest being approximately 1m from the boundary of the premises. This combined with the poor attitude that management has shown towards the advice, recommendations and Notices and the continuing noise nuisance that the premises is causing leads to the conclusion that the premises is not suitable or appropriate for live or recorded music to be provided. The various operators at the premises have demonstrated that they are unable to provide such entertainment without giving rise to complaints, and more significantly, officers of the department have witnessed the excessive noise first hand.

During visits to the premises it has been noted that there is an issue with litter in the form of cigarette butts being thrown into the street from the beer garden. This matter has also been reported to Environmental Health and Licensing by a local community group that are cleaning up the litter and also local councillors who are being approached by constituents, concerned about the impact that this is having on their community. Section 2.15 of the Revised Guidance issued under section 182 of the Licensing Act 2003 states that litter is a relevant consideration in achievement of the licensing objective of public nuisance. As such we have recommended a condition requiring the regular cleaning of the beer garden and surrounding area of cigarette butts and also a condition requiring the provision of adequate ashtrays and disposal facilities.

Taking all in to consideration, the Environmental Health Section, make the following recommendations;

Firstly our recommendation is that the premises licence is amended to include the full curtilage of the premises and to bring the beer garden within the control of the premises licence. The main reason for this is that loud music and regulated entertainment has been witnessed in the beer garden that has been uncontrolled and given rise to a statutory nuisance.

The Environmental Health Section also propose the following additional conditions;

Condition 1

By virtue of S177 (A) the Licensing Act 2003 the conditions of the Premises Licence relating to regulated entertainment shall be in force between 8.00 hours and 23.00 hours.

Condition 2

There shall be no external amplified sound (i.e. in the beer garden, car park, or anywhere else outside the curtilage of the building).

Condition 3

There shall be no regulated entertainment in the form of live or recorded music at the premises until such time that the licence holder and/or owner of the premises commissions an independent acoustic consultant to undertake a Noise Impact Assessment and the recommended control measures contained within the assessment are implemented. A copy of the Noise Impact Assessment along with supporting evidence that the requirements have been complied with shall be provided to the Local Authority for written approval prior to the commencement of regulated entertainment.

To comply with the above the following criteria must be met;

- The report must be carried out by an acoustic consultant who shall be a member of the Association of Noise Consultants and a member of the Institute of Acoustics.
- The methodology for the noise assessment shall accord with current UK guidance and British Standards and agreed with the Local Authority in advance of the assessment commencing.
- Prior to implementation of the control measures the Local Authority shall be given the opportunity to review and comment on the Noise Impact Assessment and its recommendations.

Condition 4

The Premises Licence Holder or a nominated person shall carry out proactive noise observations outside the premises at least once an hour during the provision of regulated entertainment, and take any necessary remedial action. A written record of proactive external noise assessments and, where applicable, remedial actions taken shall be kept for a minimum of 31 days from the date of the last entry in the record and this record shall be available for inspection on demand by authorised council officers at all times the premises are open.

Condition 5

Speakers shall not be located in the entrance and exit of the premises or outside the building.

Condition 6

All windows and external doors shall be kept closed after (21:00) hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

Condition 7

The smoking areas, including the beer garden, must be provided with suitable ashtrays/bins, the use of which shall be monitored by the Premises Licence Holder or a nominated person. The smoking areas, including the beer garden and adjacent highways must be regularly swept to remove cigarette ends and kept in a clean and tidy manner at all times.