

17 June 2021

Mr Mariano Aiello
Designated Premises Supervisor
Mari Deli
1A Eyot Gardens
London
W6 9TN

By email to: [redacted]
Our ref: 21060993

Dear Mr Aiello

Please allow me to introduce myself: my name is Richard Vivian and I am an acoustic consultant specialising in the control of noise from licensed premises. I have recently been instructed by Dr S Thompson to provide expert advice with regard to the noise experienced in her property at Eyot Gardens.

My qualifications and expertise are a matter of public record. I have thirty years of experience in the acoustics industry and have been involved in acoustic measurement, assessment, and building acoustics design throughout my career. I have carried out assessments of noise in connection with planning, licensing and environmental protection matters at sites throughout the UK. I have given expert evidence in the courts, in licensing hearings, in planning hearings and at public inquiries on numerous occasions.

My recommendation to Dr Thompson is that, in the first instance, I make an open approach to you in the hope that we can quickly, and efficiently, resolve at least some of the noise issues at Eyot Gardens. This is important as this is the first time that a technical expert has been appointed by Dr Thompson, or by you to address the noise breakout from your premises.

From my investigation so far it appears that noise complaints can be classified into three areas of concern:

1. Noise from the commercial use of the outside space
2. Noise from the commercial use of internal areas (including noise from amplified music, customer noise, staff noise, and noise from kitchen equipment)
3. Noise from commercial kitchen mechanical plant

Outside space

The use of outside space is regulated by your premises licence (2017/00402/LAPR) which permits a maximum of 12 customers in the front of the premises. The area must be cleared of both customers and all tables and chairs by 21:30 each day. Some conditions from your premises licence are shown below for your convenience:

28. The front outside area to the Premises shall at all times be properly supervised by members of staff when customers are present.

30. Where customers are permitted to drink alcohol outside the Premises, regular litter and glass collections shall be carried out in all areas where customers are congregating.

31. Where customers are permitted to smoke in the front outside area of the Premises smoking bins/ashtrays/receptacles should be provided.

32. A maximum of 12 customers shall be permitted in the front outside area at anyone time.

34. All tables and chairs shall be removed from the front outside area by 21:30 hours each day.

35. The outside area shall be separated from the public highway by a screen, rope barrier or other means of demarcation from the public highway which shall be removed by 21:30 hours each day.

36. Signs shall be prominently displayed in the outside area reminding patrons there are residents living nearby and instructing them to respect the neighbours and to conduct their behaviour accordingly.

37. Alcohol shall not be consumed in the outside area of the Premises after 21:30 each day

38. There shall be no open glass vessels taken into the outside area of the Premises after 21:30 hours.

You also have a temporary pavement licence (2020/00748/PAVE) granted under the Business and Planning Act 2020. This allows you to place *4 small tables and 8 chairs outside the shop front of the premises from 08:00hrs to 22:00hrs Monday-Saturday, and from 09:00hrs to 21:00hrs on a Sunday.*

It is important to note the grant of a pavement licence only permits the placing of furniture and that the conditions on your premises licence still apply. The Business and Planning Act 2020 also sets out conditions which apply to all applications including a no-obstruction condition summarised by the London Borough of Hammersmith and Fulham as follows:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility.

Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that *in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway.*

The London Borough of Hammersmith & Fulham also require that *the licence is exercised in such a manner as not to cause a nuisance, disturbance or danger to the occupiers of adjoining properties or the users of the highway.*

Internal noise/sound insulation

My client can hear noise from customers within your premises, from your staff, from kitchen equipment and also from your amplified music system. This observation, combined with the presence of heat and fumes from your kitchen, is an indication that the separating floor between ground and first floor is not adequate. This has implications for both acoustic separation and fire compartmentalisation, and therefore I urge you to check the specification and workmanship of the separating floor and confirm that it meets building regulations requirements.

Having inspected the planning file I can find no details relating to the building construction or soundproofing works. Do you have this information available? There should be details of the type of ceiling construction used including material specifications, thickness of plasterboard and the fire rating of the finished construction. The ceiling must not be breached so as to weaken the fire rating.

One other obvious noise transmission path is through the rear conservatory roof, and the open windows and doors, which results in airborne noise that affects the bedrooms of my client's property. She is unable to open the bedroom windows for ventilation because of the noise. The closing of windows and doors, particularly the roof windows in the rear section of your premises, would go some way to reduce this impact.

I also ask you to consider respecifying your sound system and fitting a limiter device so that noise from amplified music is not noticeable in the flat above.

Mechanical plant

My client has recorded sounds of a commercial washing equipment, of refrigerator alarms, and other plant noise which should be contained by the sound insulation of the separating floor if it was of adequate construction. She also experiences noise from kitchen extraction plant. A planning application is normally required for commercial kitchen extraction plant but having inspected the planning file it appears that the kitchen extraction system does not benefit from planning consent. Whilst plant of this type and size can be installed to operate without impact on neighbouring properties it requires the correct specification of that plant including size and type, location, operating mode, anti-vibration mounting, filtration and attenuation. It would be helpful if you could provide details of the plant specification and the noise impact assessment that will ultimately be required for your planning application to lawfully use this mechanical plant. It may be that a simple adjustment, or minor change to the specification, could resolve the noise issue and you should seek specialist advice on this.

It is also relevant to highlight the following conditions from your premises licence:

18. All plant and equipment shall be correctly installed, operated, maintained and regularly serviced, all in accordance with the manufacturer's instructions, to ensure that it is operating correctly and efficiently so as not to cause a nuisance to neighbours arising from noise.

29. All ventilation and extraction systems and ducting shall be correctly installed, operated, maintained and regularly serviced, all in accordance with the manufacturer's instructions, to ensure that they are operating correctly and efficiently so as not to cause a nuisance to neighbours arising from noise or odour.

Summary

Outside space - The use of the outside space is regulated both by the premises licence granted under the Licensing Act 2003, and the temporary permission of the Business and Planning Act 2020. I hope that the highlighting of relevant conditions will assist you in ensuring the use of this area complies with the relevant legal requirements.

Inside space - Closing windows and doors will reduce noise breakout. Adjusting your sound system so that music cannot be heard in the flat above will eliminate further complaints about music noise. However the integrity of the separating floor is in serious doubt and I urge you to check the specification and workmanship meets building regulations requirements for acoustic and, even more importantly, fire separation. Any weaknesses in the fire resistance of the construction, including breaches for services, air-paths and incorrect materials specification, could have tragic consequences.

Plant noise - If you could please submit the plant specification and Noise Impact Assessment in relation to the kitchen extraction plant that would be helpful. Some changes are required to reduce the noise level but these may be relatively straightforward to implement.

I trust this letter usefully highlights the key issues of noise from your premises and will assist you in ensuring that, in future, the premises is fully compliant with all its legal obligations and noise does not impact on residential amenity of adjacent residential properties. It seems reasonable to allow you a period of time to respond to my requests for information relating to the plant specification and the construction of the separating floor and I respectfully ask you reply within the next 28 days.

Yours sincerely



Richard Vivian BEng(Hons) MIET MIOA MAES MIOL
Director, Big Sky Acoustics Ltd