

Licensing Solicitors

Our Ref: KIR/PREM/PRE283
Contact: Katharine Redford

Epsom & Ewell Borough Council
Grants and Licensing Team
Town Hall
The Parade
Epsom
Surrey
KT18 5BY

29 March 2017

Dear Sirs

**Fever & Boutique Unit 5-9 Spread Eagle Shopping Mall, Epsom, Surrey
KT19 8DN
Review Application**

We act for Whitbread Group Plc (Whitbread's) on whose behalf we are instructed to submit a representation in support of the application for Review of the Licence for Fever & Boutique submitted by Surrey Police. Please take this letter as that representation.

The ground for this representation is the prevention of public nuisance.

By way of background our clients have acquired the site at 1 The Parade, Epsom, KT18 5BT and are proposing to construct a Premier Inn with some 57 rooms on first, second and third floors and associated food and beverage provision on the ground floor. As part of the development, Whitbread's are to rebuild the Comrades Club to provide the Club with modern facilities.

The Licensing Authority has approved the proposed development and granted a Licence for the Premier Inn being Licence Number EEBC/16/00139/LAPRE. The Licensing Authority has further approved the redevelopment to the Comrades Club and granted a Club Premises Certificate number EEBC/16/00200/LAPREC.

The development works are due to commence on site in May 2017. The hotel is currently due to open April 2018.

Whitbread's are an interested party. It has been identified that public nuisance is currently taking place as a result of the activities of the night club and Whitbread wishes to seek a resolution that that public nuisance ceases prior to the opening of the hotel.

Whitbread's provide a "good night" guarantee and refund customers in so far as noise issues arise. It is therefore essential to the operation of the hotel that there is no noise nuisance.

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Whitbread's are anxious that the Committee, on reviewing the Licence at this stage, are aware of the noise nuisance and decisions are made such that problems do not arise in the future on the opening of the hotel.

Whitbread's are aware of the "agents of change" principle and as such have incorporated additional noise attenuation measures into the development of the proposed hotel to include triple glazing.

It is Whitbread's intention always to work with other local business operators including night clubs. A resolution to the issue would usually be sought. If a solution cannot be found Whitbread's would seek to involve the Authorities. It may be seen as premature for our client to support a Review at this stage.

However it is acknowledged that to avoid criticism from the Authorities in the future, it is important to bring to the Committees attention the current noise nuisance ongoing at the Club at this point in time.

We have had sight of the redacted Review application only (copy attached for ease of reference). The Licensing Authority have provided us with a copy of the representation by Environmental Health and extracts of the supporting statements from Trading Standards and Child Protection together with a copy of the Ward Councillor's representation.

Whitbread's are not in a position to provide any evidence as to the current operation of the night club (save as below) and make no comment in that respect save for problems in relation to the operation of the external area to the rear of the premises.

In December 2016 it became apparent that the operation of the "smoking" area to the rear may present an issue to guests staying in the prospective hotel as a result of noise nuisance.

Accordingly, in January 2017 Whitbread's engaged Scotch Partners as Noise Consultants to undertake surveillance and prepare an in depth noise report which is attached to this representation and upon which we will rely for its full effect.

In summary, the noise report identifies that condition 5 on the Licence is in line with appropriate British Standards and that the operation of the night club particularly in relation to persons in the "smoking" area to the rear presents a noise nuisance with unacceptable noise levels for residents.

Whitbread's strongly request that the Committee leave in place condition 5 on the Licence which provides that "5. Noise levels measured outside the building at one metre from the nearest noise sensitive façade shall not exceed 5db below background levels in compliance with BS4142."

The test is in accordance with the British Standards and provides an absolute criteria to which the night club must operate.

Whitbread's seek the assurance that that test and criteria remains in place on this Licence.

We have met with the night club representatives on our clients behalf on 23 March. We are aware that this is very little time for the night club to seek or find a solution to the noise nuisance arising from its rear "smoking" area. We would encourage the night club to consider an alternative location for that smoking area such to present no noise nuisance to existing residents or those proposed guests

at the hotel. We will look to continue to work with the operator of the night club going forward.

The Committee are requested to leave in place a clear standard to which the applicant must operate in relation to the external area such that all parties can be sure of compliance and that no noise nuisance will arise.

Our clients wish to be represented at any Review hearing and we should be grateful if we could be notified accordingly.

Kindly acknowledge safe receipt of this representation.

Yours faithfully



Katharine Redford
John Gaunt & Partners
Email: kredford@john-gaunt.co.uk

Epsom and Ewell Borough Council

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I INSPECTOR 1939 JACKIE ELKINS

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description FEVER AND BOUTIQUE 5-9, Spread Eagle Walk High Street,	
Epsom	Post code (if known) KT19 8DN

Name of premises licence holder or club holding club premises certificate (if known) BAR FEVER (EPSOM) LTD

Number of premises licence or club premises certificate (if known) EEBC/10/109/LAPRE
--

Part 2 - Applicant details

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

- 2) a responsible authority (please complete (C) below) x

- 3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Inspector 1939 JACKIE ELKINS Delegated authority on behalf of the Chief Constable Surrey Police (Contact to be directed to Licensing Enforcement Officer – as below)
Telephone number (if any) 01483 631465
E-mail address (optional) LicensingEastern@surrey.pnn.police.uk

This application to review relates to the following licensing objective(s)

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |
- Please tick one or more boxes ✓

Please state the ground(s) for review (please read guidance note 2)

In September 2016, a night club located in the centre of Epsom Town called 'BAR FEVER (EPSOM) LIMITED', commenced trading under the management of new operators.

The venue, called FEVER AND BOUTIQUE (formally ELEMENTS) has an 'on' and 'off' license. The opening hours from Thursday to Saturday are until 0330hrs and on Sunday to Wednesday the opening hours are until 0230hrs. The premises has a capacity on the premises licence of 500.

Surrey Police contend that three of the Government's licensing objectives:

- Prevention of crime and disorder
- Promotion of public safety
- Prevention of public nuisance

have been seriously undermined by the level of alcohol fuelled violent crime and disorder in the venue and in the vicinity of the venue, since its opening.

Surrey Police are further concerned that young persons, under 18 years old, have gained entry into the venue.



SCOTCH
Partners

PREMIER INN & COMRADES CLUB, EPSOM

NIGHTCLUB NOISE REPORT

WHITBREAD PLC

JANUARY 2017

REVISION 00

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Revision History	Date	Prepared by	Checked by
R00 Initial issue	Jan 2017	Jacob Perry BMus AMIOA	Jason Clouston BEng MSc MIOA

1 INTRODUCTION

- 1.1 An investigation into noise emission from the Fever & Boutique nightclub has been undertaken on behalf of Whitbread PLC. This report presents the findings of an assessment of the noise emission of the recently relocated smoking area, against one of the conditions imposed by the license agreement of the nightclub.
- 1.2 In order to assess the noise impact associated with the smoking area, an external noise survey has been undertaken. The measurement data have been used to assess the level of noise emission from the smoking area. Chapter 2 of this report discusses the criteria and guidance relating to this assessment, Chapter 3 describes the external noise survey, and the assessment is presented in Chapter 4.
- 1.3 Measurement data from the noise survey are presented in Appendix A and a glossary of terminology used in this report is included in Appendix B.

2.1 LOCAL AUTHORITY AND LICENSING

2.1.1 The planning requirements for Fever & Boutique is understood to limit operation to the following times:

- Thursday to Saturday – 08:00 until 03:00 including bank and public holidays
- Sunday to Wednesday - 08:00 until 02:00 including bank and public holidays
- An additional hour to the standard and non-standard times on the day when British summertime commences
- No restriction on recorded music
- In the event of a screening of any international sporting event involving any of the countries from the UK and EIRE which falls outside the current permitted hours – from one hour before the start of the event until one hour after the end of the event

2.1.2 The operating license is also understood to be subject to a number of conditions. Condition 5 from *Annex 2 – Conditions consistent with the operating schedule* relates to noise emission and is as follows:

5. Noise levels measured outside the building at one metre from the nearest noise-sensitive façade shall not exceed 5 dB below background levels in compliance with BS 4142.

2.1.3 Condition 5 from Annex 2 of the license agreement does not specify which source of noise the limit applies to. It is therefore assumed that this applies to all noise associated with the nightclubs operation, including patron noise.

2.2 BS 4142

2.2.1 British Standard 4142 presents a methodology for assessing noise emission. BS 4142: 2014 *Methods for rating and assessing industrial and commercial sound* replaces the former BS 4142: 1997 *Method for rating industrial noise affecting mixed residential and industrial areas*. The latest document provides guidance on the assessment of the impact of a noise source whilst the earlier document provided guidance on the assessment of the likelihood of complaints relating to noise.

2.2.2 The scope on page 1 of BS 4142: 2014, states the following:

The standard is not intended to be applied to the rating and assessment of sound from:

- a) recreational activities, including all forms of motosport;*
- b) music and other entertainment;*
- f) people;*

2.2.3 BS 4142: 1997 does not explicitly exclude noise from recreational activities, music, or people. However it is made clear that the standard is intended to be used on noise sources of an industrial nature.

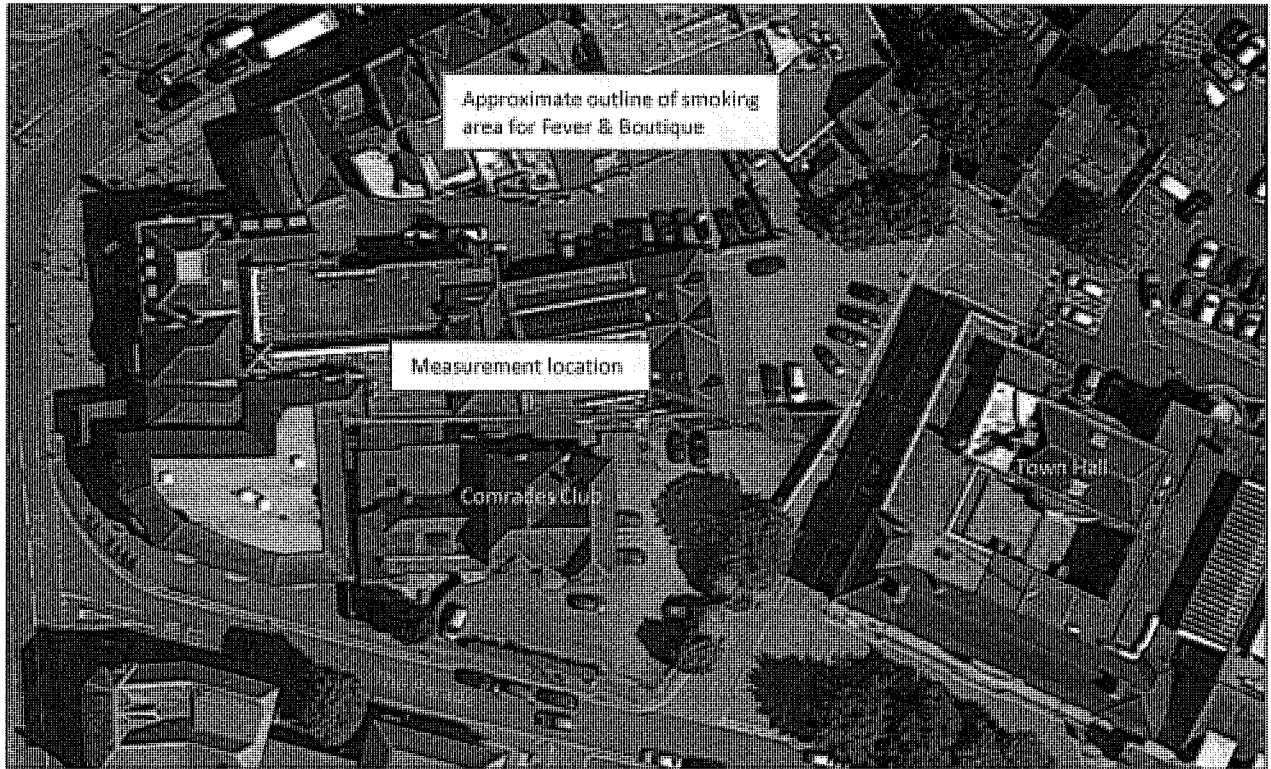
2.2.4 Both versions of BS 4142 present a methodology for comparing the noise level of the new source with that of the existing background noise level in the area in the absence of the new source. The greater the positive difference between the source level and the background noise level, the greater the magnitude of the impact.

2.2.5 The criteria of *5 dB below background level* as specified in Condition 5 of Annex 2 of the license would correspond to the risk of a complaint being of *marginal significance* when assessed according to BS 4142:1997, and the noise impact would be considered a *low impact* when assessed according to BS 4142:2014.

2.2.6 This report will assess noise from the smoking area of Fever & Boutique in general accordance with the methodology presented within BS 4142: 1997. Since the noise source being assessed is not explicitly excluded from the methodology, it is believed that this version of the standard was the basis for the condition.

3.1 SITE DESCRIPTION

3.1.1 The smoking area of Fever & Boutique is located within the eastern car park as shown in Figure 3.1, and is believed to be the greatest source of noise emission to neighbouring properties. Measurements of noise arising from Fever & Boutique were taken within the site boundary of the existing Comrades Club, in the north-east corner, approximately 6m from the centre of the smoking area.



Satellite image provided by Google

Figure 3.1 Satellite image of area with measurement location and smoking area highlighted

3.1.2 In addition to noise associated with Fever & Boutique, the noise climate at the measurement location consisted of the following noise sources, in order of magnitude:

- Traffic noise from the A24 and other major roads within Epsom. Noise levels from this source reduce overnight.
- Infrequent traffic within the Town Hall car park and side road, which is not expected to have occurred overnight
- Occasional deliveries to Fever & Boutique, which were not observed to occur outside of daytime hours
- Building services noise from rooftop plant items of surrounding buildings (Town Hall and Spread Eagle Walk) which was consistent through the daytime but reduced at night

3.2 MEASUREMENT METHODOLOGY

- 3.2.1 Continuous unattended noise level measurements were conducted at a single location around 4m from ground level under free-field conditions. This location was selected to provide representative data for noise levels associated with the smoking area of Fever & Boutique, as well as the background noise levels of the nearest noise-sensitive receivers.
- 3.2.2 The measurements were undertaken between 12:50 on 05/01/2017 (Thursday) and 14:15 on 09/01/2017 (Monday). Statistical and spectral data were recorded continuously throughout the measurement period in 5 minute samples.
- 3.2.3 The following equipment was used for the noise survey:

Equipment	Type	Serial No.
Norsonic 139	Precision sound analyser	1392774
Norsonic 1218	Microphone protection kit	12182517
Brüel & Kjær 4231	Calibrator	2291098

Table 3.1 Noise measurement equipment

- 3.2.4 The calibration of the sound level meter and associated microphone were checked prior to and on completion of the measurement period in accordance with recommended practice. No significant drift in calibration occurred during the measurement period. The accuracy of the calibrator can be traced to National Physical Laboratory Standards.
- 3.2.5 The weather conditions were generally dry with occasional showers and wind not in excess of 5 ms⁻¹, and are therefore not expected to have affected the findings of the assessment.
- 3.2.6 Level-triggered audio recordings were made during the survey, which have been used to assist in identifying the sources of measured maxima.

3.3 MEASUREMENT RESULTS

3.3.1 A selection of the measurement results is presented in Appendix A, and the full data is available in electronic form on request. A graph showing the level-history for the measurements is given in Figure 3.2.

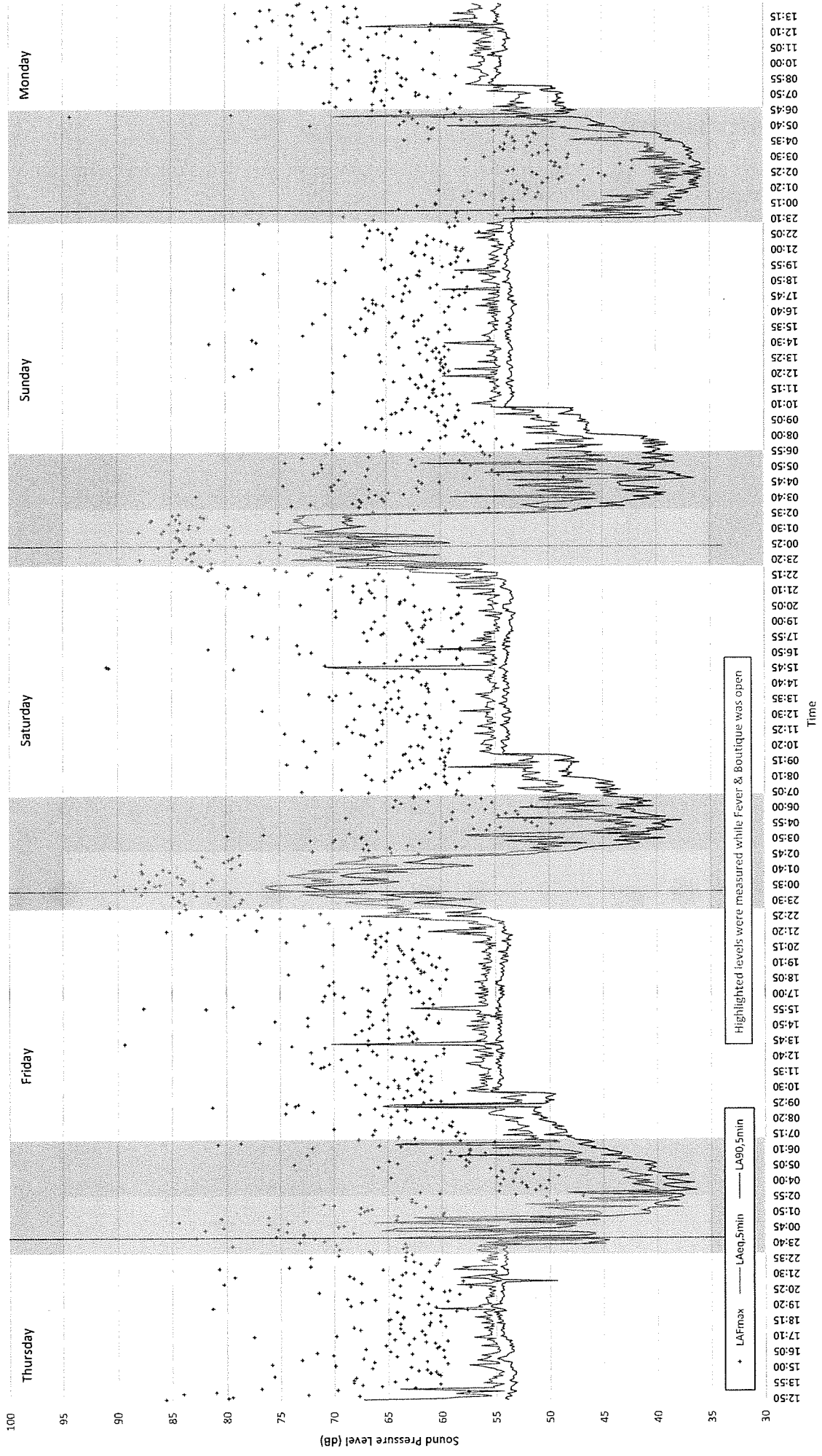


Figure 3.2 Level history graph for measurements 05/01/2017 - 09/01/2017

3.4 ANALYSIS OF RESULTS

- 3.4.1 Noise levels during the day can be seen to be relatively consistent, due to the continuous presence of nearby building services noise and traffic from the A24.
- 3.4.2 Noise levels typically were at their lowest between 03:00 and 07:00, which is common for sites with noise sources of this type.
- 3.4.3 Fever & Boutique is understood to have been open on Thursday, Friday, and Saturday nights. A significant increase in noise levels was measured from around 22:00 until 02:00 on the Friday and Saturday nights, and a slight increase in noise level between 23:30 and 01:00 was measured on the Thursday night. This coincides with the expected opening times of the nightclub, and analysis of the triggered audio recordings has revealed that this was the result of patron noise within the outdoor smoking area.

4.1 NEAREST NOISE-SENSITIVE RECEIVERS

4.1.1 In addition to the proposed Premier Inn at the site of the Comrades Club, 2 other noise-sensitive receivers have been identified in proximity to the smoking area of Fever & Boutique. These are shown in Figure 4.1.



Satellite image provided by Google

Figure 4.1 Locations of nearest noise-sensitive receivers

4.1.2 Approximate distances to the nearest window of these receivers are as follows:

- Proposed Premier Inn Hotel: 6m from centre of smoking area
- North East residence: 34m from centre of smoking area
- Residences on The Parade: 58m from centre of smoking area

4.2 BACKGROUND NOISE LEVELS

4.2.1 The L_{A90} measurements made during the survey are assumed to be representative of background noise levels experienced by the three noise-sensitive receivers.

4.2.2 Background noise levels during times when nightclub patrons were loudest could not be directly measured due to the presence of the patron noise being assessed. The background noise level has instead been approximated using the measured values during periods when the nightclub was not in operation.

- 4.2.3 Background noise levels reduced to as low as 36 dB L_{A90} on Sunday night, however it is not believed that this level would be representative of the time period while the nightclub noise was at its greatest, as noise levels would be expected to gradually reduce during the night, and Sunday night would be expected to be quieter than other nights
- 4.2.4 Background noise levels during the day time and evening periods generally stayed at around 54 dB L_{A90} owing to the local building services plant and consistent traffic noise. Since the nightclub was most active during the periods that this building services plant is switched off and traffic noise reduced, this level is considered too high to be representative of the time period when nightclub noise was at its greatest.
- 4.2.5 A representative noise level would be expected to be when traffic and building services noise would be at a minimum, but the nightclub was not in operation. The only time period during the measurement period that would fit this criteria would be the early morning period (around 05:00 to 07:00) during which L_{A90} measurements were typically around 45 dB. It is therefore believed that these values are the most representative of background noise levels at the nearest noise-sensitive receivers on Friday and Saturday nights if the nightclub was not in operation.

4.3 DETERMINATION OF SOURCE NOISE LEVELS

- 4.3.1 In order to assess the noise impact from the smoking area against the criteria in Section 2.4, the $L_{Aeq,5min}$ values must be identified in order to assess nightclub noise in general accordance with BS 4142:1997. The highest measurement from the survey is considered to be representative of the worst-case, which would usually be considered when conducting a BS 4142: 1997 assessment.
- 4.3.2 The reference values are presented for Thursday, Friday, and Saturday night in Table 4.1 below.

	Thursday night	Friday night	Saturday night
BS 4142:1997 <i>specific noise level</i>	66 dB $L_{Aeq,5min}$	76 dB $L_{Aeq,5min}$	76 dB $L_{Aeq,5min}$

Table 4.1 Reference noise levels for a location 6 metres from the smoking area

4.4 CALCULATION OF NOISE LEVELS AT RECEIVERS

- 4.4.1 The noise level at each noise-sensitive receiver has been predicted by calculating the following:
- **Attenuation due to geometrical dispersion as defined in ISO 9613-2.** The distance from the measurement location to the source has been assumed to be 6m, and the distances used for each calculation are those presented in Section 4.1.2. Spherical free-field propagation has been assumed, which could only be expected to underestimate the actual noise levels experienced by each receiver
 - **Attenuation due to screening as defined in ISO 9613-2.** Line-of-sight between the residences on The Parade and the smoking area is believed to be occluded by the wall around the Comrade Clubs site. The associated attenuation has therefore been calculated and is presented as follows:

	Frequency (Hz)							
	63	125	250	500	100	2000	4000	8000
Screening loss for residences on The Parade (dB)	6	6	7	9	11	13	16	19

Table 4.2 Calculated screening losses for residences on The Parade

4.4.2 Using the reference values presented in Table 4.1, the noise levels for each receiver have been predicted as follows:

		Thursday night	Friday night	Saturday night
Proposed Premier Inn Hotel	BS 4142:1997 <i>specific noise level</i>	66 dB $L_{Aeq,5min}$	76 dB $L_{Aeq,5min}$	76 dB $L_{Aeq,5min}$
North-East residence	BS 4142:1997 <i>specific noise level</i>	51 dB $L_{Aeq,5min}$	61 dB $L_{Aeq,5min}$	61 dB $L_{Aeq,5min}$
Residences on The Parade	BS 4142:1997 <i>specific noise level</i>	36 dB $L_{Aeq,5min}$	46 dB $L_{Aeq,5min}$	45 dB $L_{Aeq,5min}$

Table 4.3 Predicted noise levels from the smoking area at each noise-sensitive receiver

4.5 ASSESSMENT AND DISCUSSION OF RESULTS

4.5.1 Compliance with Condition 5 of Annex 2 of the license agreement has been assessed for each night using the background noise level determined in 4.2.5 and the predicted noise levels for each receiver. The findings are as follows:

	Thursday night	Friday night	Saturday night
Proposed Premier Inn	21 dB above background	31 dB above background	31 dB above background
North-East residence	6 dB above background	16 dB above background	16 dB above background
Residences on The Parade	9 dB below background	4 dB above background	3 dB above background

Table 4.4 Results of the BS 4142: 1997 assessment

4.5.2 The assessment has concluded that the nightclub was therefore not compliant with the license agreement on the Thursday, Friday, or Saturday night measured, as noise levels would have been greater than 5 dB below the background noise level for the North-East residence, the proposed Premier Inn once constructed, and the residences on The Parade on Friday and Saturday. The noise levels were between 8 and 21 dB above the limit set in the condition on both Friday and Saturday nights for the nearby residences.

APPENDIX A – NOISE LEVEL DATA

A selection of the measured noise level data are presented in the tables in this appendix. The full set of data are available in electronic form on request.

All values are sound pressure levels in dB re: 2×10^{-5} Pa.

This appendix provides an explanation of some of the acoustics terms used in this report.

	The human ear does not sense all frequencies of sound equally. Our sensitivity is at a maximum at around 2 kHz and steadily decreases above and below. Below 20 Hz and above about 20 kHz we can't hear at all.
A-weighting L_A or L_{pA} , L_{WA}	Within its operating limits a precision measurement microphone measures all frequencies the same so the output it produces does not reflect what we would actually hear. The A-weighting is an electronic filter that matches the response of a sound level meter to that of the human ear. When A-weighted the Sound Pressure Level L_p becomes L_{pA} (or L_A) and the Sound Power Level L_W becomes L_{WA} .
L_p	The instantaneous sound pressure level (L_p)
L_{pA} (or L_A)	The A-weighted instantaneous sound pressure level (L_{pA} or L_A)
	This is the root mean square size of the pressure fluctuations in the air. This level can fluctuate wildly even for seemingly steady sounds. To make sound level meters easier to read the values on the display are smoothed or damped out. This is effectively done by taking a rolling average of the previous 0.125 s (FAST time constant) or the previous 1 s (SLOW time constant).
L_{AF} , L_{AS}	The letters F or S are added to the subscripts in the notation to indicate when the FAST or SLOW time constant has been used. These are often omitted but it is good practice to include them.
L_{max}	The maximum instantaneous sound pressure level (L_{max}),
L_{Amax}	The A-weighted maximum instantaneous sound pressure level (L_{Amax})
L_{AFmax}	The A-weighted maximum instantaneous sound pressure level with a FAST time constant (L_{AFmax}).
L_{min} , L_{Fmin}	The opposite of the L_{max} is the minimum instantaneous sound pressure level or L_{min} etc. It is good practice to include the letter which identifies the time constant used as this can make a significant difference to the value.
$L_{N,T}$	The percentage exceedence sound pressure level ($L_{N,T}$),
$L_{AN,T}$, $L_{AFN,T}$ N = %age value, 0-100 T = measurement time eg. L_{A90} , L_{A10} , $L_{AF90, 5min}$	The A-weighted percentage exceedence sound pressure level ($L_{AN,T}$), the A-weighted percentage exceedence sound pressure level with a FAST time constant ($L_{AFN,T}$). This is the sound pressure level exceeded for $N\%$ of time period T . eg. If an A-weighted level of x dB is exceeded for a total of 6 minutes within one hour, the level will have been above x dB for 10% of the measurement period. This is written as $L_{A10, 1hr} = x$ dB. L_{A0} (the level exceeded for 0 % of the time) is equivalent to the L_{Amax} and L_{A100} (the level exceeded for 100 % of the time) is equivalent to the L_{Amin} . It is good practice to include the letter which identifies the time constant used as this can make a significant difference to the value.
$L_{eq,T}$	The equivalent continuous sound pressure level over period T ($L_{eq,T}$),
$L_{Aeq,T}$ T = measurement time eg. $L_{Aeq, 5min}$	The A-weighted equivalent continuous sound pressure level over period T ($L_{Aeq,T}$). This is effectively the average sound pressure level over a given period. As the decibel is a logarithmic quantity the L_{eq} is not a simple arithmetic mean value. The L_{eq} is calculated from the raw sound pressure data. It is not appropriate to include a reference to the FAST and SLOW time constants in the notation

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