

• EDINBURGH •

LICENSING BOARD

NOTICE OF MEETING

MONDAY 26th SEPTEMBER 2016

START TIME 9.30am

Council Chamber, City Chambers, Edinburgh

AGENDA

1. Minutes of meeting of 29th August 2016 for approval
2. Applications for variation of existing premises licences, new premises and provisional premises licences, personal licences, etc – as detailed in separate list
3. Premises Licence Review Proposal – 1 Dean Bank Lane, Edinburgh
4. Hearing on Consultation Responses – Policy on Amplified Music and Vocals in Licensed Premises

Nick Smith
Clerk of the Licensing Board

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LICENSING BOARD

Licensing Board membership:

Councillors Eric Milligan (Convener); Jeremy Balfour; Gavin Barrie; Chas Booth; Mike Bridgman; Nick Cook; Cammy Day; Vicki Redpath; David Walker; Norman Work

General information about the Licensing Board's meeting dates, Policies, etc is available online:-

http://www.edinburgh.gov.uk/info/20023/licences_and_permits/960/licencing_board

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LICENSING BOARD

MINUTES OF MEETING

MONDAY 29th AUGUST 2016

ITEM No. 1

Members present: Councillors Eric Milligan (Convener); Jeremy Balfour; Gavin Barrie; Chas Booth; Mike Bridgman; Nick Cook; Cammy Day; Vicki Redpath; Norman Work

Apologies: Councillor David Walker

Police Officers: Sergeant John Young; Constable Lynsey Claxton

Council Officers present: Colin Baxter (Licensing and Trading Standards Manager); Ken Fairgrieve (LSO); Muir Somerville (Building Standards Team Manager); Colin McCulloch (Building Standards)

Depute Clerk: Morag Leck; Nick Fraser (item 6)

1. Minutes of meeting of 1st August 2016 for approval

The minutes of the Board's meeting of 1st August 2016, together with the decision list from that meeting, were presented for approval.

Decision: Minutes approved.

2. Gambling Act 2005 – Applications for Licensed Premises Gaming Machine Permits (More than 2 Category C/D Machines)

The Board considered two applications for Licensed Premises Gaming Machine Permits.

Decision: Details of the decisions for each application are as set out in the list attached to these minutes.

3. Applications for variation of existing premises licences, new premises and provisional premises licences, personal licences, etc – as detailed in separate list

The Board considered eight applications for variation of existing premises licences, two applications for transfer and variation of existing premises licences, seven applications for new provisional premises licences and six applications for personal licences, the decisions for which are as detailed in the list appended to these minutes.

Declarations of interest: None

Divisions:

New Premises Licence application – 57 Constitution Street, Edinburgh

All statutory references to Licensing (Scotland) Act 2005, unless stated otherwise

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Councillor Booth, seconded by Councillor Balfour, moved that consideration of the application be continued for one month with the police to be requested to provide an antisocial behaviour report.

Councillor Milligan, seconded by Councillor Bridgman, moved that the application be granted subject to the amendments made by the applicant and with conditions as agreed.

Following a division the Board agreed to grant the application.

Decision: Details of the decisions for each application are as set out in the list attached to these minutes.

NHS Lothian representations: None

4. Premises Licence Update Report – The Hive, 15-17 Niddry Street, Edinburgh

The Board received update reports from Police Scotland and the Council's Licensing Standards Officers, on the operation of The Hive premises. Michael McDougall was present on behalf of the licence holder.

The Board noted that no concerns had been raised about the operation of the premises, but agreed it would be appropriate to request a further set of reports, for consideration at its November meeting.

Decision: Police and LSO update reports to be provided for consideration at the Board meeting on 28th November 2016.

5. Premise Licence Update Report – The Victoria Bar, 25-27 Causewayside, Edinburgh

The Board received update reports from Police Scotland and the Council's LSOs on the operation of The Victoria Bar. Stephen McGowan was present on behalf of the licence holder.

The Board noted that no concerns had been raised about the operation of the premises. On the basis that the original request for reports had been made on the basis of a one-off six month update, the Board agreed that no further action would be required.

Decision: noting the terms of the update reports, no further action required.

6. Consultation on Policy on Amplified Music in Licensed Premises

The Depute Clerk narrated the terms of a report, advising in detail of the conclusion of the Board's consultation on the terms of its policy on amplified music and vocals in licensed premises. The report provided:-

- (1) A summary of the Board's current policy and the context within which it operated;

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LICENSING BOARD

- (2) Information about the extent of the consultation carried out and the responses received;
- (3) Options available to the Board, having regard to the terms of the consultation;
- (4) Details of the next steps requiring to be taken in the event that the Board decided to amend its current policy

Following initial discussions by the Board about the consultation, the view was expressed that it would be beneficial to hold a hearing to enable those who had submitted responses to present the terms of their responses to the Board. On that basis the Board agreed to invite the following:-

- Community councils
- Councillors
- Representatives from the Music is Audible Working Group
- Licensing Forum
- Constituted organisations
- Council officers – Culture and Sport; Licensing (Place)

to a hearing, date to be confirmed. The hearing would proceed on the basis of examining in more detail the representations which had already been made to the consultation.

Decision: The Board agreed to continue consideration of the recommendations; that a date should be fixed for a hearing; that the particular consultees as listed above would be invited to attend the hearing; that the hearing would proceed on the basis of representations already made in writing to the Board. The Board agreed that the hearing should be restricted to those who had responded to the consultation.

7. Arrangements for Joint Meeting of Licensing Board and Licensing Forum

The Board was advised of the requirement for a joint meeting to be held between the Licensing Board and Licensing Forum, and agreed that it would be necessary to set a date for that meeting to proceed.

Decision: The Board agreed that arrangements should be made for the joint meeting to be held, at a date to be agreed in due course.

Councillor Eric Milligan
Convener of the Licensing Board

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – VARIATION OF PREMISES LICENCE APPLICATIONS

29 AUGUST 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
1.	334461	Leith Academicals RFC	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	Leith Academy, 20 Academy Park, Edinburgh, EH6 8JQ	Yes	No	Yes		Increase on sale hours, add off sales, add seasonal variations, bar meals, live performances, indoor/outdoor sports and outdoor drinking as activities, delete club conditions, amend children and young persons access, allow activities outwith core hours, appoint premises manager, change name of premises and substitute new layout plan. CC SFC BSR	Continued for Site Visit
2.	335873	Leith Dockers Social Club	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	17 Academy Street, Edinburgh, EH6 7EE	Yes	No	No		To alter times for children and young persons, not attending a function so that under 5's must vacate the premises by 7pm and children aged 5-15 and young persons by 10pm CC	Granted Children & Young Person's to be accompanied at all times

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – VARIATION OF PREMISES LICENCE APPLICATIONS

29 AUGUST 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
3.	334814	Punch Partnership Limited	TLT LLP 140 West George Street, Glasgow, G2 2HG	58 Angle Park Terrace, Edinburgh, EH11 2JR	No	No	Yes		To extend children's access to 10pm when consuming a meal and add on live performances during core hours CC	Granted
4.	334581	Inverleith Rugby Football Club		19 Arboretum Road, Edinburgh, EH3 5PN	No	No	Yes		To amend core times for alcohol consumption on the premises to 11:00 - 01:00 Monday to Sunday and to change core times for alcohol consumption off the premises to 11:00 - 22:00 Monday to Sunday. CC SFC O	Continued
5.	333586	Historic Environment Scotland	Historic Environment Scotland Longmore House, Salisbury Place, Edinburgh, EH9 1SH	Edinburgh Castle, 362 Castlehill, Edinburgh, EH1 2NG	No	Yes	No		To increase the alcohol capacity and to add a new unit. CC BSR	Granted - 58.05 linear metres
6.	335071	Sneaky Pete's Limited	Lindsays 4f - 5f, 19a Canning Street, Edinburgh, EH3 8HE	73 Cowgate, Edinburgh, EH1 1JW	Yes	No	No		To add childrens and young person's access CC BSR	Continued for Site Visit

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – VARIATION OF PREMISES LICENCE APPLICATIONS

29 AUGUST 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
7.	326217	Punch Partnership Limited	TLT LLP 140 West George Street, Glasgow, G2 2HG	23-24 Greenside Place, Edinburgh, EH1 3AA	No	No	Yes		Amend children and young persons access and add tastings and samplings as activities CC BSR.	Granted
8.	334697	Mr Mohammed Mushtaq	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	85 Henderson Street, Edinburgh, EH6 6ED	No	Yes	No		To increase off sale hours, increase capacity, substitute new layout plan and change premises licence holders/ managers address CC BSR	Granted – capacity 27.6 linear metres

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – TRANSFER & VARIATION OF PREMISES LICENCE APPLICATIONS

29 AUGUST 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
1.	330072	Greenmans Catering Limited	Anderson Strathern 1 Rutland Court, Edinburgh, EH3 8EY	21 Clerk Street, Edinburgh, EH8 9JH	Yes	No	No		Transfer licence, add on sales, reduced off sale hours, add seasonal variations, restaurant facilities, bar meals, receptions, club and group meetings, recorded music, live performances, wine tasting, poetry nights as activities, change premises manager and allow children and young persons access to premises CC BSR	Continued

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – TRANSFER & VARIATION OF PREMISES LICENCE APPLICATIONS

29 AUGUST 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
2.	334651	Mr Zahid Iqbal	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	7 Scotstoun Grove, South Queensferry, EH30 9PH	No	Yes	No		<p>Transfer of premises licence Change of named premises manager To provide for an increased alcohol display area, following the incorporation of the adjoining shop, 5 Scotstoun Grove, with this shop. To substitute new Layout Plan, showing the increased licensed area, the new layout, and the increase in alcohol display area. To change the description of the premises to Double shop consisting of 5 and 7 Scotstoun Grove, Edinburgh.</p> <p>CC BSR O</p>	Granted – capacity of 77.7 linear metres

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – NEW PROVISIONAL PREMISES LICENCE APPLICATIONS

29 August 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
1.	333600	Westgate Brewery	John Gaunt & Partners Omega Court, 372-374 Cemetery Road, Sheffield, S11 8FT	1 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9ED	No	No	Yes		The proposal is for food led pub restaurant which will open as licensed premises offering substantial quality food and providing occasional limited entertainment. It is intended that associated accommodation will be constructed on site in due course, opening after the proposed food led pub restaurant CC SFC BSR O Late Objection	Granted – 2300 hrs terminal hour for Children & Young Persons; 2200hrs terminal hour for external drinking area; Music Condition
2.	334812	Reiver Country Farm Foods Limited	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	82 Canongate, Edinburgh, EH8 8BZ	No	No	Yes		Restaurant with takeaway facility on ground floor of tenement on Canongate, Edinburgh CC SFC BSR	Granted- Music Condition; Capacity of 20; Off-sales with takeaway food only

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – NEW PROVISIONAL PREMISES LICENCE APPLICATIONS

29 August 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
3.	334521	Mr Umran Akbar	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	57 Constitution Street, Edinburgh, EH6 7AF	No	No	Yes		Hotel Premises located over 4 floors on Constitution Street, with ancillary facilities Cc SFC BSR O	Granted – Music condition; Capacity of 138; No off-sales; No outdoor drinking
4.	334597	Red's Smoque Limited	Brodies LLP 15 Atholl Crescent, Edinburgh, EH3 8HA	9a & 10-11 George IV Bridge, Edinburgh, EH1 1EE	No	No	Yes		Restaurant premises comprising ground and basement floors situated in the centre of Edinburgh CC SFC BSR	Withdrawn
5.	335051	Pariland Limited	TLT LLP 140 West George Street, Glasgow, G2 2HG	4-6 Nicolson Street, Edinburgh, EH8 9DH	No	No	Yes		Restaurant premises in a mainly commercial area of the city CC SFC BSR	Granted – Music condition; Capacity of 30
6.	334715	Chisholm Hunter Limited	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	97-98 Princes Street, Edinburgh, EH2 2ER	Yes	No	No		Jewellers shop located over 3 floors on Princes Street, Edinburgh CC SFC BSR	Granted – Music condition

THE CITY OF EDINBURGH LICENSING BOARD
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NOTICE OF APPLICATIONS – NEW PROVISIONAL PREMISES LICENCE APPLICATIONS

29 August 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
7.	334478	STK Rebel (Edinburgh) Limited	Anderson Strathern LLP 1 Rutland Court, Edinburgh, EH3 8EY	8 St Andrew Square, Edinburgh, EH2 2BD	Yes	No	No		The premises is a restaurant and bar facility located at St Andrew Square. The Premises wil provide breakfast, snack, brunch, lunch and dinner. The premises has an outdoor dining/drinking area at front of the premises CC SFC BSR	Granted – Music condition; 2200hrs terminal hour for external drinking area; Capacity of 300

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
PERSONAL LICENCE APPLICATIONS

29 AUGUST 2016

No	Reference	Applicant	Agent Details	Remarks	Decision
2.	333092	Nicola Burdell	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	Continued (2nd appearance) CC S	Granted
5.	327653	Steven Ramsay		Continued for final time CC	Refused – Preventing Crime & Disorder
7.	330306	Pascal Theze	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	Continued (2 nd appearance) CC	Continued – Final time
8.	329342	Amber Carol Anne Turner		Continued for final time CC	Refused – Preventing Crime & Disorder, Protecting Children & Young Person's from Harm
5	334253	Kieran Anthony Rose	Personal Training UK (Ltd), Unit 12B, The Photo Block, Hatherley Lane, Cheltenham, GL51 6PN	CC	Withdrawn
6	334215	Connor Hugh Handren	Training Information Centre, Unit 2 The Lauries Centre, 142 Calughton Road, Birkenhead, CH41 6EY	CC	Continued – First time

ITEM No. 2

THE CITY OF EDINBURGH LICENSING BOARD

**APPLICATIONS FOR VARIATION OF EXISTING
PREMISES LICENCES, NEW & PROVISIONAL
PREMISES LICENCES AND PERSONAL LICENCES**

26 September 2016

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – CONTINUED VARIATION OF PREMISES LICENCE APPLICATIONS

(26 September 2016)

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Remarks	Decision
1.	334461	Leith Academicals RFC	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	Leith Academy, 20 Academy Park, Edinburgh, EH6 8JQ	Yes	No	Yes	Continued for Site Visit. Increase on sale hours, add off sales, add seasonal variations, bar meals, live performances, indoor/outdoor sports and outdoor drinking as activities, delete club conditions, amend children and young persons access, allow activities outwith core hours, appoint premises manager, change name of premises and substitute new layout plan. CC SFC BSR	
2.	334581	Inverleith Rugby Football Club		19 Arboretum Road, Edinburgh, EH3 5PN	No	No	Yes	To amend core times for alcohol consumption on the premises to 11:00 - 01:00 Monday to Sunday and to change core times for alcohol consumption off the premises to 11:00 - 22:00 Monday to Sunday. CC SFC O	

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – CONTINUED VARIATION OF PREMISES LICENCE APPLICATIONS

(26 September 2016)

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Remarks	Decision
3	335071	Sneaky Pete's Limited	Lindsays 4f - 5f, 19a Canning Street, Edinburgh, EH3 8HE	73 Cowgate, Edinburgh, EH1 1JW	Yes	No	No	Continued for Site Visit To add childrens and young person's access CC BSR	

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – CONTINUED TRANSFER & VARIATION OF PREMISES LICENCE APPLICATIONS

26 SEPTEMBER 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
1.	330072	Greenmans Catering Limited	Anderson Strathern 1 Rutland Court, Edinburgh, EH3 8EY	21 Clerk Street, Edinburgh, EH8 9JH	Yes	No	No		Transfer licence, add on sales, reduced off sale hours, add seasonal variations, restaurant facilities, bar meals, receptions, club and group meetings, recorded music, live performances, wine tasting, poetry nights as activities, change premises manager and allow children and young persons access to premises CC BSR	

THE CITY OF EDINBURGH LICENSING BOARD
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NOTICE OF APPLICATIONS – VARIATION OF PREMISES LICENCE APPLICATIONS

26 September 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
1.	335394	Ms Rachel Margaret Evelyn Bucknall	Mr Andrew D Williams WS 24 Canning Street, Edinburgh, EH3 8EG	27 Baird Road, Newbridge, EH28 8RA	No	No	Yes	2 September 2016	To include Barge (permanently moored) and the Jetty within the licensed footprint. The Barge is to be part of the main licensed area and not part of the outdoor area CC	
2.	335243	Greene King Retailing Limited	TLT LLP 140 West George Street, Glasgow, G2 2HG	4-6 Fishmarket Square, Edinburgh, EH6 4LW	No	No	Yes	2 September 2016	To include external area of premises. Public house on ground floor of a 3 storey terrace CC SFC	
3.	335049	B&M Retail Ltd	Joelson Wilson LLP 30 Portland Place, London, W1B 1LZ	6 Moray Park, Edinburgh, EH7 5TS	No	Yes	No	2 September 2016	Increase off sale hours CC	
4.	331281	Oddbins	Oddbins 1-9 Hardwick's Square, Hardwick's Way, Wandsworth, London, SW18 4AW	5 Queensferry Street, Edinburgh, EH2 4PA	No	Yes	No	2 September 2016	To add on sale hours and to add tastings as other activities Traditional Wine Merchants CC SFC	

THE CITY OF EDINBURGH LICENSING BOARD
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NOTICE OF APPLICATIONS – VARIATION OF PREMISES LICENCE APPLICATIONS

26 September 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
5.	336772	Earthy Foods & Goods Limited	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	33-41 Ratcliffe Terrace, Edinburgh, EH9 1SX	No	No	Yes	2 September 2016	To increase capacity, add tasting and classes/tutorials as activities, provide for a barbeque in courtyard area, substitute new payout plan and amend description of premises. Operation involving retail and cafe/restuarant with outside areas locked in former self contained warehouse, located back from the main road. CC BSR	

THE CITY OF EDINBURGH LICENSING BOARD
LICENSING (SCOTLAND) ACT 2005
NOTICE OF APPLICATIONS – VARIATION OF PREMISES LICENCE APPLICATIONS

26 September 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
6.	336841	Summerhall Management Ltd	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	1 Summerhall, Edinburgh, EH9 1PL	No	No	Yes	2 September 2016	To add restaurant facilities and indoor/outdoor sports, cultural and entertainment events, covering live music, corporate events, book and music launches, classes and lectures, tastings and miscellaneous others as activities, increase capacity, allow activities outwith core hours, change description of premises, provide certain event may take place in Red Lecture theatre, in courtyard area there may be temporary and permanent structures at certain times of the year. Arts, cultural and entertainment venue and including a bar, cafe and courtyard located in part of a large building near the meadows. CC BSR	

THE CITY OF EDINBURGH LICENSING BOARD
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NOTICE OF APPLICATIONS – PROVISIONAL PREMISES LICENCE APPLICATIONS

26 September 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
1.	336774	Leith Theatre Trust	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	28-30 Ferry Road, Edinburgh	Yes	No	No	2 September 2016	The premises consist of the Thomas Morton Hall on the ground floor and ancillary offices, kitchen and toilets plus basement . The entrance hall provides access to the upper floors and has an entrance to the Thomas Morton Hall and to the Theatre, which is included in the premises but is presently closed with no public access. The premises this is located in a building set off Ferry Road and accessed by a driveway. CC SFC BSR	

THE CITY OF EDINBURGH LICENSING BOARD
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NOTICE OF APPLICATIONS – PROVISIONAL PREMISES LICENCE APPLICATIONS

26 September 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
2.	337031	D&F East Ltd	MacDonald Licensing Bf, 21 Rutland Square, Edinburgh, EH1 2BB	1 Forth Street, Edinburgh, EH1 3JX	No	No	No	2 September 2016	Restaurant premises situated over two floors extending to 60 covers. Ground floor comprises of restaurant and servery area. Basement floor further seating, kitchen, toilets, storage rooms and staff cganging rooms CC SFC BSR	
3.	337105	Lounge Licensees Limited	Lindsays 4f - 5f, 19a Canning Street, Edinburgh, EH3 8HE	316-320 Gorgie Road, Edinburgh, EH11 2QZ	No	Yes	No	2 September 2016	Specialist off sales on ground floor of tenement type property CC SFC BSR	
4.	336849	Mellis Cheese Limited	Lindsays 4f - 5f, 19a Canning Street, Edinburgh, EH3 8HE	330 Morningside Road, Edinburgh, EH10 4QJ	No	Yes	No	2 September 2016	Cheesemonger with off sale CC SFC BSR O	

THE CITY OF EDINBURGH LICENSING BOARD
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NOTICE OF APPLICATIONS – PROVISIONAL PREMISES LICENCE APPLICATIONS

26 September 2016

No	Reference	Applicant	Agent Details	Premises	On Sale	Off Sale	On & Off Sale	Last Date for Objection	Remarks	Decision
5.	333048	Third Wave Coffee Limited	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	6 South College Street, Edinburgh, EH8 9AA	No	No	Yes	2 September 2016	Coffee Shop on ground floor of tenement building in South College Street. CC SFC BSR	
6.	334471	Mr Andrew Muir	Mr Andrew Muir 18 St Peter's Place, Edinburgh, EH3 9PH	44-45 St Patrick Square, Edinburgh, EH8 9ET	Yes	No	No	2 September 2016	Tex-Mex Restaurant CC	

THE CITY OF EDINBURGH LICENSING BOARD
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PERSONAL LICENCE APPLICATIONS

29 AUGUST 2016

No	Reference	Applicant	Agent Details	Remarks	Decision
1.	335007	Vito Alongi	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	CC	
2.	334681	David Charles Andrew Crighton		CC	
3.	336793	Anna Kai Downs	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	CC	
4.	334215	Connor Hugh Handren	Training Information Centre, Unit 2 The Lauries Centre, 142 Calughton Road, Birkenhead, CH41 6EY	CC	
5.	314955	Angela Senior McLintock	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	Continued (2 nd Appearance) CC	
6.	336792	Cameron Sangster Ross	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	CC	
7.	330306	Pascal Theze	Macdonald Licensing 21A Rutland Square, Edinburgh, EH1 2BB	Continued for Final Time CC	

PREMISES LICENCE REVIEW PROPOSAL – 1 DEAN BANK LANE, EDINBURGH

ITEM No. 3

1. Purpose

- 1.1 To ask the Board to make a premises licence review proposal, having regard to the circumstances as set out below;
- 1.2 To consider revocation of the premises licence, on the basis of those circumstances.

2. Main Report

- 2.1. The premises licence for 1 Dean Bank Lane was held by the company Millennium Spice Limited, company number SC197230. During recent investigations carried out by LSOs, it has been confirmed that the company was dissolved in on 19th February 2010.
- 2.2. The premises have continued to operate in the meantime, run by the same persons involved in the company. There has been a named premises manager in place for the duration. In all other respects the premises have operated without causing problems for LSOs or police. The premises licence annual fees have been paid on time every year.
- 2.3. Dissolution of the company does not result in the premises licence ceasing to have effect, in terms of section 28 of the 2005 Act. However the dissolution of the company means that it would not be possible for the existing premises manager to be replaced, for example, in the event that this became necessary. The Board is therefore asked to make a review proposal, on the basis of the licence holder company having been dissolved and having regard to the potential detrimental impact upon the licensing objectives.
- 2.4. In the event that the Board agreed to make a review proposal, it is suggested that it would be appropriate in the circumstances to revoke the premises licence. It would be open to the parties operating the premises at present to submit an application (or applications) to secure the short term licensing arrangements for the premises, always on the basis that any such application would require to be considered on its merits.

3. Recommendation

- 3.1 The Board is asked:-
 - (a) to make a review proposal on the ground stated; and to revoke the premises licence.

Depute Clerk of the Licensing Board
19th September 2016

REPORT – HEARING ON RESPONSES TO CONSULTATION ON POLICY – AMPLIFIED
MUSIC AND VOCALS IN LICENSED PREMISES

1. Purpose

- 1.1 To set out the basis upon which the Board agreed to hold a hearing on responses to its consultation on the terms of its policy on amplified music and vocals in licensed premises;
- 1.2 To set out the potential options available to the Board at the conclusion of the hearing;
- 1.3 To confirm what steps require to be taken in the event the Board decides to amend its existing policy.

2. Main Report

- 2.1. The Board consulted on the terms of the part of its Statement of Licensing Policy dealing with amplified music and vocals in licensed premises, between 21st April and 22nd July 2016. The Board received a detailed report on the outcome of the consultation, at its meeting on 29th August 2016. The Board agreed it would be beneficial to hold a hearing to enable those who had submitted responses to present the terms of their responses to the Board, as follows:-
 - Community councils
 - Councillors
 - Representatives from the Music is Audible Working Group
 - Licensing Forum
 - Constituted organisations
 - Council officers – Culture and Sport; Licensing (Place)
- 2.2. The Board agreed it would be appropriate to invite the individuals or groups as listed above to speak to the terms of their particular representations, on the basis they had responded to the consultation in some detail. It was also agreed the hearing would proceed on the basis of the representations made, rather than reopening the consultation exercise for further responses to be submitted. The hearing would enable the Board to focus in on the issues highlighted by consultees.
- 2.3. The purpose of the hearing is to provide those who have been invited to attend with the opportunity to present the terms of their representations to the Board, in order that Board members can then ask questions and discuss the issues raised. Having regard to the range of responses provided and appended to this report, it is suggested that the hearing proceed as informally as possible to allow those attending to present their views. As with normal Board procedure however, it is suggested that questions from persons attending the hearing are directed via the Convener.

REPORT – HEARING ON RESPONSES TO CONSULTATION ON POLICY – AMPLIFIED MUSIC AND VOCALS IN LICENSED PREMISES

- 2.4. At the conclusion of the hearing, it is intended that the Board would be in a position to consider the options available to it, as set out in the previous report referred to, and referred to below.

Options

Status Quo

- 2.5. Should the Board choose to leave the wording of the policy unchanged, it remains open for applicants and licence holders to respond to any request from the Council's LSOs for the condition to be attached, to present a case to the Board why it should not be so attached. It also remains an option for licence holders to apply to the Board for variation of the condition where it is currently attached to their licence.

Revision of Policy

- 2.6. The Board previously agreed at its March 2016 meeting that the overall review and publication of a new Statement of Licensing Policy would be most appropriately tackled by its successor Board, from May 2017 onwards with a new policy statement to be published at the latest by November 2018. Whatever action is taken by the Board following this consultation, it will still be a relevant matter for consideration by the successor Board as part of that overall review.
- 2.7. As the MIA group's initial representation to the Licensing Forum focused in particular on premises in Edinburgh with the capacity to provide live performances, the Board may wish to give particular consideration to such venues at the present time. In practice the amplified music and vocals condition has been attached to premises where live performances and/or recorded music have been confirmed as activities in the operating plan. The Board may wish to consider whether the amended condition as suggested in the consultation might be appropriate for consideration in connection with venues offering live music in particular. By way of context, there are around 300 premises of that type in the Board's area.
- 2.8. The consultation proceeded on the basis that the Board was being asked to consider the alternative form of wording as suggested by the MIA group, via the Licensing Forum and no alternative options were consulted upon. If the Board were minded to consider other options to address the issue as a result of responses received to this consultation then it may be that a further meeting of the Board would be required to allow officers to investigate any alternatives proposed and advise Board on the feasibility of such alternatives, by way of a further report to Board.

**REPORT – HEARING ON RESPONSES TO CONSULTATION ON POLICY – AMPLIFIED
MUSIC AND VOCALS IN LICENSED PREMISES****Further procedure if Policy Revised**

- 2.9. In the event that the Board decides to amend its policy, there may be a further requirement to consult with the Board's statutory consultees. This will be with the Licensing Forum and Health Board at minimum – depending upon the terms of such amendment. In any event, any change will require that the Board publishes a supplementary Statement of Licensing Policy, incorporating the amendments in terms of section 6 of the 2005 Act.
- 2.10. Section 27A of the 2005 Act affords the Board the power to vary premises licences in a particular area, within the whole Board area and/or in relation to premises of a particular description. In view of the risks associated with making a “blanket” variation, without the possibility for representations to be made by those who may be affected by it, it is suggested that it would be more appropriate for the Board to consider major variation applications, submitted by licence holders who wished to vary the condition currently attached to their licences, on a case by case basis.

3. Recommendation**3.1 The Board is asked:-**

- (a) To hear from the representatives attending to speak to the terms of their representations;
- (b) To decide on the basis of all of the representations made whether to take any action with regard to the current Statement of Licensing Policy and if so, what action should be taken;
- (c) In the event that it is considered necessary to explore further options, to call for a further report, exploring the feasibility of such options;
- (d) To instruct the depute clerks to take all appropriate action with regard to the Statement of Licensing Policy, in the event that the Board decides to amend the existing policy

4. Background/Appendices**4.1 Minutes of Meeting – 14th March, 1st August, 29th August 2016**

Appendix 1 – Extract from current Statement of Licensing Policy

Appendix 2 – Recommendation from Licensing Forum to carry out consultation

Appendix 3 – Response from Licensing Standards (Place Directorate)

REPORT – HEARING ON RESPONSES TO CONSULTATION ON POLICY – AMPLIFIED
MUSIC AND VOCALS IN LICENSED PREMISES

Appendix 4 – Response from Music is Audible Working Group

Appendix 5 – Response from New Town and Broughton Community Council

Appendix 6 – Response from Southside Community Council

Appendix 7 – Response from Grassmarket Residents' Association

Appendix 8 – Response from Stockbridge and Inverleith Community Council

Appendix 9 – Response from Morningside Community Council

Appendix 10 – Response from Edinburgh Association of Community Councils

Appendix 11 – Response from Southside Association

Appendix 12 – Response from Tollcross Community Council

Appendix 13 – Response from Scottish Licensed Trade Association

Appendix 14 – Response from Leith Theatre Trust

Appendix 15 – Response from Musicians' Union

Appendix 16 – Response from Traditional Music Forum

Appendix 17 – Response from Director of Culture

Depute Clerk of the Licensing Board
20th September 2016

APPENDIX 1

Current wording of Statement of Licensing Policy

- 6.2 Where relevant representations are made, the Board will make an objective judgement as to whether other conditions may need to be attached to a licence to secure achievement of the licensing objectives. Any such conditions will be consistent with section 27 of the Act. Any conditions arising as a result of representations will primarily focus on the impact of the activities taking place at the licensed premises, on those attending the premises and members of the public living, working or engaged in normal activity in the vicinity of the premises, and will cover matters that are within the control of the licenceholder. **In particular where the operating plan indicates that music is to be played in premises, the Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property.**

APPENDIX 2

Recommendation from Edinburgh Licensing Forum to consult:

Encouraging Live Music in Edinburgh –

Recommendation to the Licensing Board following upon a presentation to the Licensing Forum on Tuesday 1st December 2015 and open discussions and debate on the matter thereafter.

Noted that Edinburgh's current licensing policy in effect requires amplified music to be wholly inaudible from neighbouring properties.

The music sector in Edinburgh has reported that these rules are not conducive to a flourishing live music and cultural scene.

The Music is Audible working group explained they would like to have enhancing Edinburgh's current licensing policy enhanced as follows:

Existing: 'The Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property' In practice the LSO normally suggests to the Board that this condition be applied. The Board then put it to the applicant who in almost all cases routinely accepts the condition. No legal arguments are made against the imposition of the condition.

Proposed that the policy should be slightly more flexible: "Amplified music... shall not be an audible nuisance in neighbouring residential premises".

It was suggested that this proposed wording would create a better environment for musicians, promoters and residents in the city and that an updated policy would provide clearer guidance for Licensing Standards Officers when they assess whether noise created by music is indeed a nuisance.

The suggested guidance for this approach has been taken from the Scottish Government's guidance which was issued to accompany the statutory nuisance provisions of the Public Health (Scotland) Act 2008. Section 3 provides 'There are 8 key issues to consider when evaluating whether a nuisance exists' and goes on to provide definitions of these issues, which are listed as: impact, locality, time, frequency, duration, convention, importance and avoidability.

Noted that although the following items have already been agreed it was stressed that there should be:-

Changing terminology so that both venues and residents are seen as clients in a mediation process;

Raise awareness (for councillors and officers) on the impact noise complaints have on the city's cultural and economic environment;

The Council encourages residents to talk to the venue about their concern as a first step and provide guidance to all music venues on their option in the event of a noise complaint;

The Council considers the Agent of Change principle for local conditions.

The meeting appeared very supportive of the "Agent of Change principle*)" and the decision was to recommend to the Licensing Board that they carefully consider, in a positive way, the recommendations of the Music is Audible group and consult widely on the proposals particularly with Community Councils before reaching any conclusions.

Supplementary

The Forum were also made aware of the low number of noise complaints and that the LSO's would provide further data to them about this and further that no premises has had their premises licence reviewed for breach of the noise condition since 2012.

*The Agent of Change Principle is not complicated or controversial, it's simple common sense: Agent of Change says that the person or business responsible for the change is responsible for managing the impact of the change.

This means that an apartment block to be built near an established live music venue would have to pay for soundproofing, while a live music venue opening in a residential area would be responsible for the costs. A resident who moves next door to a music venue would, in law, be assessed as having made that decision understanding that there's going to be some music noise, and a music venue that buys a new PA would be expected to carry out tests to make sure its noise emissions don't increase.

AMPLIFIED MUSIC AND VOCALS NOISE CONDITION CONSULTATION

The amplified music and vocals condition was originally introduced in Edinburgh under the Licensing (Scotland) Act 1976. Under this Act the condition was routinely applied to any premises that varied or extended their hours to operate beyond 11 pm. The condition would apply only to the additional hours granted beyond 11pm.

In 2008, prior to the introduction of the Licensing (Scotland) Act 2005, the then Edinburgh Licensing Board agreed that the same condition would be introduced as a local condition and would apply to all hours that a licensed premises was open. The Board will recollect that this condition has thereafter been included in subsequent 2011 and 2014 Board policy documents. The condition was strengthened in 2014 to include the words **'will always consider the imposition of a condition'**.

As a local condition, it would be the role of the Licensing Standards Officers (LSOs) to ask for the condition to be applied to any licence for applications that include the intention to provide amplified music and vocals on the premises. This is reflected in the Licensing Board Statement of Licensing Policy, which states:

Licensing Board - policy on amplified music in licensed premises

Where relevant representations are made, the Board will make an objective judgement as to whether other conditions may need to be attached to a licence to secure achievement of the licensing objectives. Any such conditions will be consistent with Section 27 of the Act. Any conditions arising as a result of representations will primarily focus on the impact of the activities taking place at the licensed premises, on those attending the premises and members of the public living, working or engaged in normal activity in the vicinity of the premises, and will cover matters that are within the control of the licence holder. **In particular where the operating plan indicates that music is to be played in premises, the Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property.**

In practice members will know from their time on the board that the condition is routinely applied, without objection from applicants or their legal agents having been received.

The noise condition which is subsequently applied to a licence by the Licensing Board states:

All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises

The actual wording of the condition is objective as opposed to being subjective. If an LSO listening within a neighbouring residential property is able hear any amplified music or vocals from the licensed premises, then the condition is being breached. This is straightforward, and means that the findings of LSOs attending a noise complaint are not reliant on any personal judgement.

Under the Licensing (Scotland) Act 2005, one of the stated roles of the LSO is “to provide mediation services for the purpose of avoiding or resolving disputes or disagreements between the holders of premises or occasional licence and any other persons”. Licensing Standards has always taken the view that noise complaints should be resolved by means of mediation whenever possible. Noise complaints are only referred to the Licensing Board when:

1. The Premises Licence Holder does not participate fully in the mediation process, or continues to play amplified music and vocals to be played at a level where it can be heard within any of the neighbouring residential premises; or
2. Both the Licensing Standards Officers and Premises Licence Holder have made all reasonable efforts but have been unable to resolve the matter. It is then referred to the Licensing Board for its consideration and direction. An example would be where an acoustic analysis is required, but the premises is unwilling to solely bear the cost of this and is looking for the resident to contribute.

Since the LSOs came in to post in June 2008 they have dealt with 1156 noise complaints. Of these, 1144 were resolved by the LSOs. The remainder of 14 were referred to the Licensing Board, resulting in 13 written warnings and a suspension of amplified music and vocals for just one premises. Therefore only a small number of complaints (for a breach of the condition) that have been referred to the Licensing Board since the new Act came into force, representing 1.2% of the total noise complaints dealt with. As shown below, since 2013, all complaints have been resolved by the LSOs without referral to the Board (see Table 1 below).

Table 1

Year	No. complaints	Resolved by LSOs	Referred to Licensing Board	Action taken by Licensing Board	No. licences revoked as a result of breach of noise condition
2008	28	28	0		0
2009	109	109	0		0
2010	158	155	3	3 written warnings	0
2011	118	114	4	3 written warnings 1 suspension of amplified music and vocals	0
2012	121	117	4	4 written warnings	0
2013	201	198	3	3 written warnings	0
2014	176	176	0		0
2015	184	184	0		0
2016	61	61	0		0
Totals	1156	1142	14	13 written warnings 1 suspension of amplified music and vocals	0

In the recommendation from the Music Is Audible group, regarding the proposed wording of an amended noise condition (**'Amplified music...' ...shall not be an audible nuisance in neighbouring residential premises'**) it is suggested that the Licensing Board should take into account the statutory nuisance guidance provisions of the Public Health (Scotland) Act 2008.

For the Licensing Board's information, this guidance was provided by the Scottish Government under the Public Health (Scotland) Act 2008 to assist with the application of the new and amended statutory nuisance provisions of the Environmental Protection Act 1990. It was not provided to deal with any noise or nuisance issues under the Licensing (Scotland) Act 2005 and guidance does not give any advice which would assist in understanding what an 'audible nuisance' might be.

Member of the Board will of course have to balance their experience of dealing with complaints about noise issues from licensed premises, the case made for change by MIA group and the feedback from the consultation.

Looking at the current condition the Board may wish to consider the following points:

- it provides a high level of protection to nearby residents.
- sets a clear and specific level that can be understood by officers, licensees and residents.
- provides a level playing field for all liquor-licensed premises.
- it can however be inflexible and does not take account of other issues such as the time of day the noise occurs.
- there are only a small number of complaints each year, which would question the need maintaining this stringent condition

When looking at the proposed new condition the Board may wish to consider the following points;

- It may introduce an element of flexibility when compared to current condition
- there is a risk that an amended condition may reduce protection available to residents living near licensed premises
- it would not set a specific noise level that can be easily understood by all stakeholders
- would be difficult to assess and enforce as it would require detailed noise monitoring and then a subjective assessment of whether that level of noise constitutes and 'audible nuisance' . Experience of LSO's is that this subjective approach is less likely to satisfy the complainant
- will mean that residents who make complaints in the future will likely have to accept some level of noise before a threshold for nuisance is reached.

Members of the Board will be aware that the current condition is attached to several hundred licences already in force. Any change in Board policy would not affect that condition unless those premises licence holders seek major variation of their licence to remove or alter the condition. LSOs would be legally obliged to enforce the actual conditions on any licence and equally the public could

call for a review of the licence if they felt a condition was being breached. In that context members are requested to take detailed legal advice on how any change to the conditions might be introduced.

APPENDIX 4

MUSIC IS AUDIBLE

Response to Representation by New Town and Broughton Community Council

New Town and Broughton Community Council (NTBBC) representation available at:

<http://www.ntbcc.org.uk/music-is-audible-consultation-representation-by-community-council/>

Full NTBBC representation also attached (downloaded from the link above)

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Introduction and Summary

We sympathise with NTBCC's concern that residents should be protected from extraneous and intrusive noise but must draw the Licensing Board's attention to inconsistencies, errors, likely misrepresentation of the proposed change and definite misstatements regarding both the work of the Music is Audible group and the surrounding context.

We address these in detail below but must open, regretfully, by noting a sense in this representation of a predetermined refusal to engage in the process in a spirit of co-operation between the stakeholders in this city that we hoped for. A similar refusal to allow for the possibility that those working for this change are acting in good faith is also evident here and suggested by some other responses from community councils such as Morningside, who refused even to meet with our representative to discuss the proposal on the grounds that their decision to oppose the change had already been made and was a forgone conclusion.

Having taken pains to research and consult widely over these proposals for close to two years we note that although it mentions studies and contexts, this response appears not to have engaged with our proposals or the materials provided in much detail. Of course, we would not expect encyclopaedic knowledge nor academic standards of referencing. Nevertheless, the statements made by the NTBCC appear to be based mainly on assertion and, we are afraid, do not stand up to scrutiny.

A brief summary of key responses to NTBCC includes the following points:

- Research illustrates that culture is vital to a city's well-being, economic and social sustainability. The proposed change will benefit cultural producers and, by extension, Edinburgh as a whole.
- Evidence and professional advice suggests that 'inaudibility' – like 'nuisance' – is subject to interpretation. The answers to how nuisance will be adjudicated are clear **(discussed below, 1.iii – vii)**
- There is no evidence that the proposed change will be more difficult to enforce. Rather, by moving away from an impossible criterion (inaudibility) it is geared towards facilitating meaningful negotiation in specific cases and, more broadly, a move away from the 'zero sum' view of the relationship between residents and music makers.
- This should be possible given that, contrary to the picture painted by the NTBCC representation, a very small proportion of total complaints to the

council – c.2% – relate to entertainment noise from licensed premises (as detailed below 3.iii)

- The NTBCC statement that no evidence has been produced to support the case for the proposed change is untrue. The Music Venue Trust and University of Edinburgh engaged in substantive primary research prior to the consultation. NTBCC's representation, on the other hand, relies heavily on unsubstantiated assertions (discussed in detail below 3.iii – vi, 5.ii –viii, 6. iii - iii)
- The NTBCC's assertion that the proposed change in wording is at variance with the Music Venue Trust's other recommendations on 'agent of change' is either a misreading or misrepresentation of those recommendations (discussed in detail in this document 2.iii). The proposed change is entirely consistent with both the other recommendations made by the Music Venue Trust and the broader thrust of policy elsewhere in U.K and abroad.
- The research alluded to in the representation that illustrates the health impacts of noise focuses primarily on traffic and aircraft noise. The NTBCC representation does not offer sufficient evidence for the direct link they claim between research in this area and the potential effects of the proposed change in wording (4.i – iii)
- It is not the case that Edinburgh's current policy could set the way forward. In fact, the opposite is true. As detailed below (6.iii) the direction of travel for policy in cities in the U.K is towards a more nuanced view of the situation, and a more supportive attitude towards musicians and venues.
- Edinburgh risks being left behind with an anachronistic approach if it misses this opportunity to change its policy to better reflect the realities of city life, cultural production and the broader current policy trajectory.

On the following pages, we address the NTBCC claims point by point and in detail under the headings they ascribe. There is some overlap in their document between their headline points and the headings given for expanded points made below these. We have grouped their points to the headings according to their closest fit.

1) ENFORCEABILITY

1.i) NTBCC headline claims

“the present condition is clear cut and readily enforceable, whereas the proposed condition is subjective – who decides what is a “nuisance”? Who arbitrates in a difference of viewpoint?”

and

“supporters claim it will enable Licensing Standards Officers to make a “fairer and more balanced judgement”. In reality, it will have the opposite effect of making judgements more difficult and subjective, harder to resolve satisfactorily, and therefore open to judicial review”

1.ii) Response

Firstly, to the question: “Who decides what is a ‘nuisance’? Who arbitrates in a difference of viewpoint?”

Since this is a change to the city’s licensing policy – and will be administered in the same fashion – the same mechanisms as previously would be used to arbitrate – Licensing Standards Officers (LSOs) would be primary points of contact.

This was clear in the letter to community councils sent by Cllr Austin-Hart to Community Councils to inform them of the consultation which noted that – as NTBCC’s next point acknowledges:

“We believe that this amendment will achieve a fairer balance that we all desire and give the Licensing Standards Officers the tools that will enable them to make a fairer and more balanced judgement.”

The claim is made that: “the present condition is clear cut and readily enforceable, whereas the proposed condition is subjective”.

This is something of a blunt assertion that, on examination, proves difficult to substantiate.

1.iii) Evidence regarding 'inaudibility'

There are, in fact only two other councils in the UK that currently employ 'inaudibility' as a standing criterion¹. This reflects the problems with 'inaudibility' outlined by The Institute of Licensing's *Consultation: Guidance on Premises Licence Conditions*, published in 2015².

The Institute of Licensing's consultation points out that:

"Conditions imposed on a licence should be:

- 1) Appropriate, necessary and proportionate;
- 2) Precise, clear and unambiguous;
- 3) Practical, realistic and enforceable; etc."

Within the detail of 2) is the following paragraph:

"39. So, for example, where a condition requires "inaudibility" at the nearest noise sensitive premises, what exactly do we mean by the word "inaudibility"? Inaudible to whom? An average teenager's ability to hear high-frequency sound is measurably better than a thirty-something's. Is the condition complied with in the case of a thirty-year old, but breached when a teenager is present? The quiet hum of an air conditioning unit in an office would fail the "inaudibility" test, but is that what the condition was aimed to prevent? And where, precisely, do we mean when we say "nearest noise sensitive premises"? Do we mean the block of retirement flats 30 metres away or the student accommodation 20 metres away? If the problems associated with this commonly encountered noise condition are seen as far-fetched or overly pedantic, then the reader can turn to the High Court where a similarly worded condition was recently struck down for lack of clarity and precision."(p.12)

The consultation report goes on to state the following under the heading 'Noise':

"'Inaudibility' conditions have been popular in the past but have faced sufficient criticism in the courts to be quashed as invalid for lack of precision. Noise conditions are notoriously difficult to pre-empt and should be applied only where professional advice has been obtained from the licensing authority acoustic advisor. Such

¹ These are Dundee and the Isle of Wight. In other places where 'inaudibility' is used, it is heavily qualified (e.g. in Glasgow as a measure of last resort for particularly problematic cases). Details provided in the Music Venue Trust report, appended to City of Edinburgh Council Corporate and Policy Strategy Committee referral from Culture and Sport Committee – (Item 7.9, Encouraging Live Music in Edinburgh – 3 November 2015, Note 3). Available at: www.edinburgh.gov.uk/download/meetings/id/48727/item_79_-_encouraging_live_music_in_edinburgh_-_update_-_referral_from_the_culture_and_sport_committee+&cd=2&hl=en&ct=clnk&gl=uk

² Available at: <https://www.acs.org.uk/download/the-institute-of-licensing-consultation-guidance-on-premises-licence-conditions/>

conditions will be strictly tailored to the premises in question and the concerns to hand in relation to noise attenuation and resultant nuisance.”(p.23)
(*The Institute of Licensing’s Consultation: Guidance on Premises Licence Conditions*)

This is not just a matter of semantics. Contrary to NTBCC’s assertion, ‘inaudibility’ is as at least subjective as ‘nuisance’, relative to surrounding conditions (traffic noise and other ambient or local sounds).

Crucially, however, ‘inaudibility’ lacks the criteria laid out by the proposed wording for assessing a ‘nuisance’. The claim that ‘inaudibility’ by being clear-cut is readily enforceable, though intuitive, actually is not the case.

When our representative – Nick Stewart - met with Community Councils, a repeated complaint was of a lack of confidence in enforcement. While we sympathise with a sense that something not working at the moment may be diluted by the proposed change, we suggest that since genuine ‘inaudibility’ is difficult to ascertain and even harder to achieve, it leads to unrealistic expectations about both what is possible and enforceable.

A broader argument is for a shift away from an oppositional culture placing residents on one side and venues/artists on another. The proposed change, with workable criteria for LSOs, venues and residents alike would therefore, we suggest, be both easier to enforce and more conducive to productive and realistic negotiations.

1. iv) Additional claims about ‘Enforceability’

In making additional claims about ‘Enforceability’ the NTBCC describe the proposed wording as:

“a complex and drawn-out procedure with strong elements of subjectivity and no guarantee of resolution, which could damage relationships between residents and venue owners.”

1.v) Response

As addressed above, ‘inaudibility’ is equally subjective and problematic to ascertain. Indeed, Edinburgh’s own report on *Noise Pollution and the Civic Environment* states that, “Noise is subjective, and this can make it difficult to measure in a meaningful way” (p.30, Para 30.2)³

The NTBCC further claim that,

³ Available at: www.edinburgh.gov.uk/download/downloads/id/3263/soe_noise_pollution.pdf

"Noise is unwanted sound, so by definition it is a nuisance. Musical tastes vary tremendously, and it is unacceptable for an individual to impose their preferences onto others without consent."

This is a problematic expansion of all unwanted sound into a proposed policy definition – traffic noise, likewise, may be 'unwanted'. The proposed wording offers very clear criteria for 'nuisance'.

Likewise, they assert:

"Musical tastes vary tremendously, and it is unacceptable for an individual to impose their preferences onto others without consent."

This presumes that the proposed change in wording allows for unreasonable encroachment into domestic space and ignores the fact – even as it refers to the 'individual' that most such encroachments, and resultant complaints, are *between* residents. (This is addressed in detail in response to claims about 'Noise and Amenity' in 6.vi. below)

1.vi) NTBCC claim on burden of proof.

"The proposed changes shift the burden of proof to demonstrate a nuisance onto residents, rather than the present clear-cut definition."

1.vii) Response

This is a misreading of both the proposed change and the MVT recommendations, which do not concern a 'burden of proof' as in a criminal investigation but are about finding productive ways forward. 'Inaudibility', as illustrated above, is a contentious criterion and still has to be 'proved', however that is achieved. The involvement of LSOs, or EHOs, would be required in either case whereas the proposed change in wording provides for a more equitable and realistic framework for negotiation.

2) THE MUSIC VENUE TRUST RECOMMENDATIONS

2.i) NTBCC headline claim:

“the proposal is at variance with the Music Venues Trust recommendations that, when a venue opens up in an existing area, the venue operator as “agent of change” must ensure soundproofing”

2.ii) Response

This is quite simply untrue. Or, at best, it is a misreading of the Music Venue Trust’s recommendations or a misunderstanding of the ‘agent of change’ principle.

Ensuring soundproofing is, of course, a requirement of an incoming venue if it is new to an area (i.e the ‘agent of change’). The point of ‘agent of change’ is to make whoever is responsible for that change responsible for managing its effects.

This is not contrary to the proposed change in wording. The requirement for ‘inaudibility’ and ‘agent of change’ are distinct, if related, issues. Were ‘agent of change’ to be implemented, the incomer would be required to mitigate sound in line with the surrounding legislative context – whether or not that refers to ‘inaudibility’ or ‘audible nuisance’. It would apply to *whoever* was the ‘agent of change’ (venue, new resident, building developer, etc.)

2.iii) Evidence regarding the Music Venue Trust report

The Music Venue Trust’s report, in fact, addresses several aspects of the situation in Edinburgh both individually and in the round with a remit that ranged across City of Edinburgh Council (CEC) departments and broader cultural life of Edinburgh. This remit included, “Special attention... to the need for the piece of work to be framed in the context of the long-term vision of Edinburgh as a world class cultural city seeking a balance between its economic and cultural life and the needs and wishes of residents” (City of Edinburgh Council, Corporate Policy and Strategy Committee, Tuesday November 3, 2015, *Encouraging Live Music In Edinburgh: Update, Music Venue Trust report – p.16*)⁴

Its recommendations consisted of 10 action points grouped into 6 categories that included both specific points of current policy and strategic areas of Edinburgh’s

⁴ Available at: www.edinburgh.gov.uk/download/meetings/id/48727/item_79_-_encouraging_live_music_in_edinburgh_-_update_-_referral_from_the_culture_and_sport_committee+&cd=2&hl=en&ct=clnk&gl=uk

cultural policy (such as Desire Lines). One of these categories was Licensing Policy. It is here (B.2, p.19) that the proposed change is referenced.

'Agent of Change' falls under a separate category (E.7,p.27) and we note that it includes, in service to the above referenced need for balance between cultural life and the 'needs and wishes of residents' that provision that CEC consider Agent of Change and consult with the Scottish Government on the matter, "[i]f venues can demonstrate that they are acting responsibly and trying to resolve tensions with their neighbours" (p.23)

The report also includes checklists for both venues (p.22) and residents (pp.23 – 24) with advice on how to minimise sound bleed and move towards, "Changing the tone of discussions about tensions and disputes between residents and venues by focusing on the factors leading to the complaint and how to resolve the result of that combination of factors, rather than looking to blame one party and instruct them to sort the problem out" (p.23)

The suggested new wording for the policy also does not "carefully evade allocating responsibility", as the NTBCC representation has it, because responsibility for soundproofing under agent of change (or any other planning conditions) is a separate issue which would be addressed if and when it was introduced.

The Music Venue Trust's recommendations, then, are entirely consistent on this point, both internally, and with regard to the wider policy landscape.

As stated above, our goal is not to create extraneous noise but to move towards a co-operative solution. We would hope that the Community Councils read the material, made available in the public domain by the council, in this spirit. This appears not to have been the case.

3) EDINBURGH'S MUSIC SCENE

3.i) NTBCC headline claim about lack of evidence regarding music scenes.

"although it is claimed that the inaudibility clause discourages musicians from performing in Edinburgh, no evidence has been produced to support this view. Indeed, the city has a thriving music scene. Venues which have failed have done so for commercial/management reasons"

3.ii) Response

The first part of this claim is not true and the second part conjectural and offering an incomplete picture. Research carried out by the University of Edinburgh included a 'live music census' of the city. Findings from this were made freely and publicly available and fed into the considerations of the working group. Again, these are referenced in the publicly available documents provided by CEC pertinent to the proposed change.

3.iii) Evidence

This primary research showed that while, indeed, the city has a vibrant music scene, its sustainability is damaged by the 'inaudibility' clause with local musicians and grassroots venues particularly affected.

"In relation to complaints in the last 12 months the census also concluded that 42% of venues reported experiencing issues related to noise. Just under half (44%) of musicians also reported that their gigs have been affected by noise restrictions. However, data supplied by the Council indicated that from 1 April 2014 to 30 June 2015 only 64 complaints related to noise were received linked to 18 venues in total, with none of these complaints reaching the stage of being addressed by the Licensing Board. Alongside further information detailed in the MVT and University of Edinburgh findings, research therefore indicates that there is a high level of self-policing taking place amongst venue operators. In the qualitative data gathered, there is an indication that venues are being naturally protective of their licenses and sensitive to the potential of any involvement of Council officers or Police, therefore acting in advance of any official processes."
(*Edinburgh Live Music Census Report*, p.11)⁵

⁵ Available at: <http://livemusicexchange.org/wp-content/uploads/Edinburgh-Live-Music-Census-Report.pdf>

The census report (p.5) also recommends reconsidering the requirement for 'inaudibility'.

The NTBCC claim that venues that have failed "have done so for commercial/management reasons" is an oversimplification and also not evidenced.

Live music (as both the Music Venue Trust and census reports make clear) takes place across a vast variety of different types of venue – from dedicated music venues, through pubs and cafes to stadiums. Doubtless some ventures will fail due to poor management. Nobody wishes this proposed change to shore up venues that are acting irresponsibly.

Others may fail for 'commercial reasons'. This is something of a vague term. It could be said to include expenses and limitations on revenue generating activities. This being the case the 'chilling effect' (*Edinburgh Live Music Census Report*, p.4) that the 'inaudibility' clause has on venue operations may in some cases contribute to commercial difficulties.

It is well established that running a dedicated music venue at anything other than the apex of commercial activity is a notoriously precarious business. The problems of sustaining grassroots venues, while not unique to Edinburgh,⁶ are exacerbated by a licensing regime that currently tilts against both dedicated music venues and the possibility of other businesses moving towards providing music on a part time basis.

3.iv) NTBCC headline claim about motivations of people proposing the change

"we note that the main agitation seems to be from venue proprietors rather than musicians, which suggests commercial motivation rather than altruistic support for the arts"

⁶ See for instance:

Adam Behr, Matt Brennan, and Martin Cloonan, (2014) *The cultural value of live music from the pub to the stadium: Getting beyond the numbers*. Arts and Humanities Research Council/University of Edinburgh and University of Glasgow. Available at:http://www.research.ed.ac.uk/portal/files/16545984/The_Cultural_Value_of_Live_Music_From_Pub_to_Stadium.pdf

David Pollock (2015), 'The Slow Death of Music Venues in Cities', *The Guardian*, 9 September 2015. Available at: <https://www.theguardian.com/cities/2015/sep/09/the-slow-death-of-music-venues-in-cities>

Jamie Doward (2015), 'Final encore for UK's live music venues as noise rules lead to closures' *The Observer*, 5 September 2015. Available at: <https://www.theguardian.com/music/2015/sep/05/sheffield-boardwalk-uk-live-music-venues-shut-developers>

3.v) Response

This, again, is simply untrue. The Music is Audible group is made up of a mixture of venue operators (none at the top end of commercial operation, all grassroots), musicians, academics and other concerned stakeholders.

3.vi) Evidence

Further, the response of musicians to the Edinburgh Live Music Census⁷ indicates in both numerical terms and in the qualitative responses both an active interest in this subject and high levels of concern about the 'inaudibility' clause. This is further borne out by the amount of musicians reporting noise issues affecting their work (*Edinburgh Live Music Census Report*, p.11) and the majority of respondents who perceive the Edinburgh music scene to be either static or shrinking (*Edinburgh Live Music Census Report*, p.86)

Statements from prominent musicians since the census (see section 7, below) likewise testify to the fact that this is not a commercially driven 'agitation' but stems from cultural practitioners and their facilitators' concerns for both their livelihoods and the long-term viability of the city as a cultural space. (We note, too that these concerns chime with those expressed in the Desire Lines consultation, which was not directly related to Music is Audible).

The tone taken here by NTBCC suggests a failure to engage in any depth with the actual composition of the Music is Audible group, with the evidence it has provided or with the wider media statements regarding the cultural life of the city where musicians have made their feelings clear.

The NTBCC write,

"It is suggested that the inaudibility clause is not conducive to a flourishing music scene in the city. This claim is completely unsubstantiated."

In fact, this claim has been thoroughly substantiated by primary research carried out at some length by the University of Edinburgh, and the Music Venue Trust. We politely suggest that the Community Council have not engaged with this research and reject the attribution of bad faith.

As already illustrated, the research conclusions in Edinburgh are borne out by the research and policymaking carried out elsewhere, in the U.K and internationally, (details of some of these initiatives are outlined in 6.iii below regarding 'Noise and Amenity')

⁷ 307 musicians responded, across a wide spectrum of professional activity and genre orientation. (By way of comparison, a similar exercise in Melbourne received 560 responses, in a city with a population of 4 million compared to Edinburgh's c.0.5million). *Edinburgh Live Music Census Report*, p.60

The NTBCC, also write:

"It is also noted that the principal support to date has been from the venue operators and promoters, with no actual musicians present. This must raise the issue of whether the motivation is actually for the benefit of the music industry, or whether it is in fact driven by commercial pressures to relax amenity standards for less responsible operators; in fact, primarily to increase alcohol sales, contrary to Licensing's objectives on responsible drinking."

This, as above, is untrue.

Many musicians were present at the original Live Music Matters meeting in November 2014 and musicians were represented on the Music is Audible group, as was their representative body, the Musicians' Union. The absence of musicians from Community Council meetings is explainable by the fact that they take place precisely when musicians are working.

The large number of musicians' responses to the Edinburgh Census (*Edinburgh Live Music Census Report*, p.60), as well as the content of their responses (*Edinburgh Live Music Census Report* p.88) belies the claim that this is not a cause of concern for them, as do the additional statements made in this response (Section 7, below). Likewise, the public support of the Musicians' Union^B for the proposed change is a clear indicator of musicians' representation in this matter.

The suggestion that the proposed change is guided by an attempt to "relax amenity standards for less responsible operators and increase alcohol sales" is emotive, conjectural and unsupported by either the wording in the proposed change, any statements made by venue operators or others proposing it.

We discuss in more detail below under (5.iv) 'Economic Impact' the problematic nature of framing this in terms of 'the music industry' (and the incomplete understanding of how it works on display).

It bears mention here, however, that in fact, the venue operators most intimately involved with the proposed change are those looking to promote live music not offer alcohol promotions. The broad view in the sector – as noted by Sydney's taskforce on the matter – is that live music *reduces* the amount of alcohol consumed.

"Preliminary research supports a widespread sector view that audiences at live music and performances consume significantly less alcohol than patrons of other forms of hotel-based entertainment, and can therefore lower the licensing risk for a venue.

^B See, for instance: <http://www.musiciansunion.org.uk/Home/News/2015/Apr/Keep-Music-Live-in-Edinburgh>

(City of Sydney, *Live Music and Performance Action Plan*, p.14)⁹

Similarly (p.48):

“These findings are supported by evidence obtained through consultations, where it was suggested that live music in venues can be a solution to many actual or potential social issues through the social connections it creates. A number of participants noted that live music often draws the focus of the crowd away from alcohol consumption and towards the music performance – the specific reason for attendance at the venue for 63% of patrons.”

It is in nobody’s interests – least of all those seeking to operate successful and safe venues – to propose a change that will make it easier for poorly managed competitors to tarnish the sector as a whole. The wording of the proposed change was designed to *maintain or increase* amenity standards, not reduce it.

The implication that it involves underhand tactics to circumvent responsible licensing is one we reject entirely.

⁹ Available at: http://www.cityofsydney.nsw.gov.au/__data/assets/pdf_file/0007/232783/Final-Live-Music-and-Performance-Action-Plan.pdf

4) HEALTH CONCERNS

4.i) NTBCC headline claim about noise and health.

“research shows that exposure to persistent noise can lead to health problems – deafness and chronic stress is linked to heart attacks, strokes, high blood pressure and immune problems”

4.ii) Response

This is undoubtedly true as far as it goes, although no studies are cited (save for a vague reference to ‘Berlin’ in the expanded comments below on ‘Health Effects’). **But the vagueness of this statement elides such health problems and their much broader context with the specific issues pertinent to this consultation.**

We can only conjecture the source referred to in the representation since none is provided but can provide some contextual information about pertinent studies (including those that may be those alluded to by NTBCC).

4.iii) Evidence

The Music Venue Trust provides a link on its own site to a *Daily Telegraph* article about noise - ‘Noise Having Huge Impact on Health’¹⁰ - citing “research published last year [i.e. in 2006] by Germany’s Federal Environmental Agency in Berlin”.

Some similarities in the text of the article and that of the above statement suggest this may be the source of NTBCCs information since it also refers to European law requirements for digital noise mapping where NTBCC refer to EU noise standards.

The key points here, however are that many of the most prominent studies that fit this description:

- a) Deal with environmental noise, overall and that**
- b) Where they do focus on specific noise sources, the emphasis (as in the *Telegraph*) tends to be on traffic and aircraft noise.**

Some examples are below:

The *Annual Report of the German Federal Environment Agency (2006)* cites “road traffic [as] the main source of noise with 60% of the German population claiming to suffer from it” (p.9)¹¹

¹⁰ <http://www.telegraph.co.uk/news/uknews/1561091/Noise-having-huge-impact-on-health.html>

It does mention the dangers of regular exposure to “high noise levels over extended periods as well as to brief very loud peak exposure” (p.9), with loud music included here (along with power tools and fireworks) but this is in the context of hearing damage due to direct, close exposure not as a consequence of sound leakage. Indeed, other problem factors here are “headphones” or even “toys” (ibid.) but greater emphasis is placed on the wider problem of traffic and aircraft noise.

Other German studies from 2006 linked to the German Federal Environment Agency also concentrate on aircraft and transportation noise:

They include:

Babisch W. (2006) ‘Transportation noise and cardiovascular risk: Updated review and synthesis of epidemiological studies indicate that the evidence has increased’. *Noise Health*, 8:1-29¹²

Greiser E, Janhsen K, Greiser C. (2006) Beeinträchtigung durch Fluglärm: Arzneimittelverbrauch als Indikator für gesundheitliche Beeinträchtigungen. [Adverse effects by aircraft noise: Drug consumption as an indicator for health impairments] research report No. 205 51 100; German Federal Environment Agency

Niemann H, Bonnefoy X, Braubach M, Hecht K, Maschke C, Rodrigues C, Robbel N. (2006) ‘Noise-induced annoyance and morbidity results from the pan-European LARES study’. *Noise Health*, 8:31, 63-79¹³

All of these focus on transport noise and make scant or no reference to music and the night-time economy.

They are cited in more recent studies providing evidence about the health effects of noise, such as:

Maschke, Christian (2011), ‘Cardiovascular effects of environmental noise: Research in Germany’, *Noise and Health*, Vol.13, No.52, pp.205-211¹⁴

This makes no reference whatever to music and although it notes the deleterious effects on ‘night time’ noise, does so in light of traffic noise.

¹¹ Available at: <http://www.umweltbundesamt.de/en/publikationen/annual-report-2006-federal-environmental-agency>

¹² Available at: <http://www.noiseandhealth.org/article.asp?issn=1463-1741;year=2006;volume=8;issue=30;spage=1;epage=29;aulast=Babisch>

¹³ Available at: <http://www.noiseandhealth.org/article.asp?issn=1463-1741;year=2006;volume=8;issue=31;spage=63;epage=79;aulast=Niemann>

¹⁴ Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3971384/>

The World Health Organisation (WHO)'s *Night Noise Guidelines for Europe* (2009)¹⁵, contains a chapter on "The Effects of Night-Time Noise on Health and Well Being" (pp.97), the leading contributor to which is Dr. Wolfgang Babisch (cited above) of the German Federal Environment Agency.

This chapter deals with night-time noise as a whole, including 'neighbour' noise and traffic within its remit.

This, however, includes contact noise, noise from sanitary fittings, central heating, etc as well as hi-fis and televisions. Its main emphasis is on the health effects but it would be a stretch, to say the least, to single out music as a key factor, still less the 'night-time' economy as differentiated from any other neighbours, a much more prominent source of annoyance.

In sum, the claim regarding the health effects of noise is *prima facie* true, but the direct causal link between this and the proposed change in wording tenuous at best. As cursory research reveals, and further investigation emphasises, the 'noise' referred to in such studies includes, indeed often prioritises, traffic noise, aircraft noise and noise produced *by other residents*. The conflation of these with amplified music from licensed premises is insufficiently evidenced and borders on disingenuous.

4.iv) Additional claim about health

The NTBCC writes "*Apart from disturbed sleep, even quiet domestic activity can become impossible by a constant bass thud from neighbouring property*"

A 'constant bass thud' would be proscribed in the proposed change as an 'audible nuisance'.

¹⁵ Available at: http://www.euro.who.int/__data/assets/pdf_file/0017/43316/E92845.pdf

5) ECONOMIC IMPACT

5.i) NTBCC headline claim.

“if Edinburgh’s policy is stricter than many other places, it reflects the need to protect the amenity of the unusually high residential component in the centre. This sector makes a valuable contribution to the economic health of the city, far greater than the music industry”

5.ii) Response

It is true that Edinburgh has an unusually dense residential component in the city centre. Nowhere in the proposed change of wording is it suggested that this should be subjected to discomfort, its amenity diminished or the demography of the city altered.

The references to the residential component of the city centre as a ‘sector’ and its comparison to ‘the music industry’ are confusing, and misleading.

5.iii) NTBCC related claim about economic impact

The NTBCC describe the economic situation thus:

“Tourism and leisure, of which the music industry is part, is certainly a major player in the city’s economy. But it is not as large as the residential sector. Tourists stay briefly and then move on; residents day in, day out, spend money in the city’s shops, small businesses and pubs, creating jobs, maintaining historic buildings, supporting public transport, and much else besides. That is what keeps the city afloat.”

5.iv) Response

Firstly, to describe the ‘residential sector’ as an entity on par with the tourism, the music industry (or, for that matter, whisky, universities or power) is a category error.

All working residents of the city centre contribute in some capacity to its economy as described above (including musicians, promoters, venue operators, sound technicians, bar-staff etc. who buy bus tickets and shop for produce like anyone else).

The model deployed here is flawed – an attempt to compare apples with oranges. Indeed, many of the small businesses and pubs to which NTBCC refers are precisely those most exercised by the ‘inaudibility’ clause. Larger scale and more commercially oriented venues, are – comparatively – less affected.

Further, the 'music industry' is actually a diverse and complex system of different sub-sectors (recording, publishing, venues, agents, promoters, artists, distributors, etc.) not a monolithic entity¹⁶. Whilst the larger local promoters, such as Regular Music, and the multinationals, like Live Nation, may operate at scale and with high turnovers, this is not the case for the bulk of operators in Edinburgh.

In fact, the margins are tight even for the bigger operators and perilously so for grassroots practitioners. Whilst nobody wants to *lose* money, this is often a reality. Nobody enters into the business of live music at grassroots with profit as the sole – or even primary – motivation. There are, frankly, much easier ways to make money.

5. v) Evidence

Again (and as evidenced by the Edinburgh Live Music Census) the majority of venues seeking to put on live music (and which contribute significantly to the city's economy) are the grassroots venues, pubs, cafes and other small businesses (*Edinburgh Live Music Census Report*, p.30) that are integral to the city's everyday life.

Current academic research, and indeed much governmental thinking internationally, is coming to view live music – and culture more broadly – in 'ecological'¹⁷ terms – a balance of small and large venues, commercial and enthusiast driven operators and policy and infrastructural contexts. The proposed change in wording is designed to promote a healthy ecology that supports local cultural activity throughout the year in a manner that sustains the population of the city centre, not the expensive commercial operations (whose revenues flow to multinationals, not locally).

To portray the 'music industry' as a behemoth seeking to dilute city statutes for profits is both a gross misreading of how the live music sector operates and a misrepresentation of the majority of Edinburgh's music oriented businesses. As Professor Simon Frith (Tovey Professor at the University of Edinburgh) noted in his keynote address on the 'social value of music' to the European Music Council Annual Forum in Glasgow on April 19 2013:

*"a music industry does not create a music culture; rather, a music culture leads to the development of a music industry"*¹⁸

¹⁶ Both academic and industry writing bears this out. e.g:

John Williamson and Martin Cloonan (2007), 'Rethinking the Music Industry', *Popular Music*, 26:2, 305-322

UK Music (2015), *Measuring Music 2015*

¹⁷ See, e.g.:

John Holden (2015), *The Ecology of Culture A Report commissioned by the Arts and Humanities Research Council's Cultural Value Project*, AHRC

Behr et al (2015) 'Live Concert Performance: An Ecological Approach', *Rock Music Studies*, 3:1, 5 - 23

¹⁸ Full text available at: <http://livemusicexchange.org/blog/the-social-value-of-music-in-the-context-of-european-regeneration-policy-simon-frith/>

5. vi) NTBCC additional claim.

If increased noise pollution drives residents away, we will be left with the same barren crime-ridden streets as too many other cities.

5. vii) Response

No evidence is provided that the proposed change would lead to increased 'noise pollution', nor for the emotive comparison to 'barren crime ridden streets' elsewhere. Indeed a thriving, accessible arts scene throughout the year is point of appeal for a city – not a driver of either residential or capital flight, as this claim suggests.

The *World Cities Culture Report 2015*¹⁹ notes, for instance, that 'Cultural Vibrancy and City Success Go Hand in Hand' (*World Cities Culture Report 2015* p.14), and points out that attracting and keeping economically active residents is a factor of a city's cultural offering:

"In a global marketplace, having a good job is not always enough. Talented people want a vibrant urban experience, they want festivals, clubs, art galleries, they want to eat great food and meet interesting people. The energy and character of a city is as important in attracting investment as it is in attracting theatre-goers, and in developing and keeping a skilled workforce. This is particularly fundamental within the creative industries—a critical component of world cities' economies." (World Cities Culture Report 2015,p.14)

Furthermore, it notes the dangers of economic success "driving out culture and creativity by making cities unaffordable for many local artists and cultural producers" (p.8). The proposed change, we argue, is precisely a means of attempting to balance the needs of local artists and cultural producers whilst maintaining the amenity that attracts people to, and keeps them in, a thriving city. (See also the American Planning Association's briefing on Arts, Culture and Economic Vitality²⁰). Contrary to NTBCC's assertion above, a city centre that supports its local cultural producers is a sustainable and attractive proposition for residents.

¹⁹ Available at:

http://www.worldcitiescultureforum.com/assets/others/WCCF_Report2015_FINAL.pdf

²⁰ Available at: [https://planning-org-uploaded-](https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/research/arts/briefingpapers/pdf/vitality.pdf)

[media.s3.amazonaws.com/legacy_resources/research/arts/briefingpapers/pdf/vitality.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/research/arts/briefingpapers/pdf/vitality.pdf)

6) NOISE AND RESIDENTIAL AMENITY

6.i) NTBCC headline claim:

“as other cities rediscover urban living, the Edinburgh policy could set the way forward rather than being perceived as outdated and restrictive.”

This is echoed in the additional claim (under ‘Noise and Residential Amenity’):

“It has been suggested that Edinburgh’s inaudibility condition is outdated and over-restrictive. However, as more cities regenerate their central areas and residential uses are returning, it could well be that our example will be seen as a sensible and workable model for other cities to adopt.”

6.ii) Response

This is utterly conjectural and, in fact, incorrect. The broader policy thrust on this is in the opposite direction nationally and internationally.

By not taking this opportunity to amend its policy to support its urban cultural activities – while maintaining the rights of residents – Edinburgh would actually risk being left behind.

6.iii) Evidence

Organisations such as Sound Diplomacy, feature conferences with planners and policymakers concerned with music at local, state and international levels. The broad consensus of cities in the U.K, as elsewhere, is to move towards a more progressive approach to the relationship between venues and residents – one that is based on negotiation and nuance, as the proposal in question suggests, along with the Music Venue Trust and other expert opinions.

Some examples are provided below:

The London Mayor’s Office, for instance, is seeking to directly address the plight of venues by implementing a ‘Rescue Plan for Grassroots Venues’ (2015). This includes such recommendations as a move towards the ‘agent of change’ principle and, notably,

“Local authorities and the police should endeavour to cut excessive licensing requirements... Local authority and police licensing processes should be reviewed so

that officers are empowered to reduce the number of license conditions on grassroots music venues” (*London’s Grassroots Venues Rescue Plan*, p.28)²¹

London has also established a Night Time Commission to understand the challenges faced by night-time businesses. The launch of this included the observation that,

“Around the world, cities are starting to re-evaluate their night time economies. There is growing recognition that there is increasing demand for a broader night time culture and entertainment offer.”²²

It also noted that cities around the world are appointing Night Mayors “to champion, coordinate and bring innovation to their night time economies” (A similar suggestion is made in the Music Venue Trust report to the city council, F.10)²³

Amsterdam, Paris, Toulouse and Zurich:

This is indeed the case, with a Night Mayor appointed in Amsterdam and the concept proving successful enough to be adopted in **Paris, Toulouse and Zurich**²⁴ and to be under consideration in Berlin as well as London.

Australia:

The decision to appoint Night Mayors has also been made mooted **Adelaide** and **Sydney**. Adelaide, in particular, is moving towards placing itself as a cultural hub by reducing the regulatory burden on venues. Its recent ‘Streamlining live music regulation’ initiative makes clear the direction of travel²⁵. Its recently announced strategy and raft of reforms were considered with a view to, “reduc[ing] the regulatory burden on hosting live music for both licensed and unlicensed premises while meeting common neighbour and community concerns about noise and safety” (Government of South Australia, *Streamlining Live Music Regulation*, p.12)²⁶

Adelaide’s ‘Vibrant City’ agenda²⁷ has included a direct recognition of the benefits to a city brought by cultural activity. Joe Hay – of the South Australia Live Music

²¹ Available at: https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

²² <https://www.london.gov.uk/what-we-do/arts-and-culture/vision-and-strategy/london-night-time-commission>

²³ www.edinburgh.gov.uk/download/meetings/id/48727/item_79_-_encouraging_live_music_in_edinburgh_-_update_-_referral_from_the_culture_and_sport_committee+&cd=2&hl=en&ct=clnk&gl=uk

²⁴ <http://www.citylab.com/cityfixer/2016/01/night-mayor-amsterdam-mirik-milan/433893/>

²⁵ <http://publicsector.sa.gov.au/culture/90-day-projects/streamlining-live-music-regulation/>

²⁶ Available at: <http://mdo.sa.gov.au/wp-content/uploads/2016/08/Streamlining-Live-Music-Regulation-Report-FINAL.pdf>

²⁷ <https://renewalsa.sa.gov.au/projects/vibrant-city/>

Regulation Roundtable – described the thinking to Edinburgh’s Morvern Cunningham (freelance producer and director of LeithLate),
“In relation to archaic policy relating to music and general activation, Adelaide has been on a process to reform regulations in order to support rather than prevent live music. Importantly, it was recognised that in a world that is competing more and more for entrepreneurs, professionals and new industry, a city’s vibrancy and cultural assets are essential to attract and retain these motivated professionals and new business. Adelaide has the second largest fringe festival in the world behind Edinburgh, and we use this as a prime example that activation and vibrancy is a positive thing for our city’s brand and reputation.

In relation to archaic policy relating to music and general activation, Adelaide has been on a process to reform regulations in order to support rather than prevent live music. Importantly, it was recognised that in a world that is competing more and more for entrepreneurs, professionals and new industry, a city’s vibrancy and cultural assets are essential to attract and retain these motivated professionals and new business. Adelaide has the second largest fringe festival in the world behind Edinburgh, and we use this as a prime example that activation and vibrancy is a positive thing for our city’s brand and reputation.” (Email communication)

Initiatives in **Sydney** (the Live Performance Taskforce) and **Melbourne** (The Melbourne Music Strategy 2014 - 2017²⁸), which has also introduced the ‘agent of change’ principle, exemplify a move away from intransigent or absolutist approaches to the relationship between venues and residents.

Toronto’s Music Strategy Draft states,
“Noise regulations must balance the interests of residents and other businesses with those of venues and concert promoters, ensuring the well-being of the music industry as well as the wider public interest without unnecessary restrictions and fines. Building and planning policies should acknowledge the value of pre-existing music venues in ascribing greater noise mitigation obligations to new neighbourhood entrants.” (p.6)

Indeed, verbal reports of a meeting of planners, strategists and policymakers in Toronto during Canadian Music Week describe how mention of Edinburgh’s ‘inaudibility’ policy provoked laughter. Bemusement was, likewise, the response at industry conference Primavera Pro in Barcelona.

In short, cities worldwide are moving in a direction that makes the inaudibility criterion look increasingly draconian, ineffective and outdated as a means of maintaining the balance between residents and cultural life.

²⁸ <http://www.melbourne.vic.gov.au/arts-and-culture/strategies-support/Pages/melbourne-music-strategy.aspx>

6. iv) NTBCC additional claims regarding 'Noise and Amenity'

NTBCC write:

"[R]esidents often feel they live under siege from ever increasing numbers and ever extending hours of operation of leisure facilities, pubs and restaurants, and extra "festivals" run (often promoted and supported by those who live outside the central area) with little regard or concern for residents' amenity.

Noise pollution – especially from neighbouring premises including late-night pubs and discos – is a huge concern. It is the biggest topic of complaint to the council. In trying to protect our environment, one of our few lines of defence is the Licensing Board's condition requiring amplified music to be inaudible in neighbouring residential property."

6.v) Response

The claims made here would benefit from substantiation. We appreciate the desire for amenable living in the city centre – one we all share – but are disappointed by the divisive terms used to frame it ("last line of defence", "siege").

We wish to point out, again, that the requirement for 'inaudibility' far from being an effective 'last line of defence' is in practice not workable. The proposed change explicitly accounts for duration, timing and frequency of nuisance and would therefore cover extended 'out of hours' operations.

We appreciate the general concern about 'noise pollution' but the evidence does not bear out the contention that the 'inaudibility' clause is helping the situation.

Similarly the attempt to conflate the overarching problem of noise pollution with "late night pubs and discos" as "the biggest topic of complaint to the council" is not supported by the evidence.

6.vi) Evidence

According to an article in the *Scotsman*²⁹, approximately 11,000 complaints are made per year to City of Edinburgh Council.

Figures provided by City of Edinburgh Council to the Music Is Audible working group and outlined in the Live Music Exchange Census regarding complaints suggest that the majority of complaints relate to anti-social behaviour rather than live music.

²⁹ <http://www.edinburghnews.scotsman.com/news/noise-complaints-to-be-handled-by-police-under-new-plan-1-3990740>

- 213 complaints related to entertainment noise from licensed venues (2014 – 2015).
- 64 of these related to live music, pertaining to a total of 18 venues
(*Edinburgh Live Music Census Report*, p.52)

Based on the approximate figure of 11,000 complaints as well as CEC's own figures, noise complaints relating to entertainment from licensed venues account for under 2% of the total (1.93% if we take 11,000 as total complaints in a year).

(Complaints relating to live music account for about 0.6% of complaints to the council in total).

Edinburgh's own release of data on the *Civic Environment: Noise and Pollution* suggests that the vast bulk of complaints stems from *domestic* music (65% of total from 2004-2007, compared to 8% for 'other domestic noise', the next highest category. 'Entertainment' noise was half this, at 4% of the total, the same amount as 'barking and animal noise' and less than 'construction noise') (Para 30.17)³⁰

The evidence here suggests that contrary to the assertion that residents need to be 'defended' from other aspects of city living, the biggest cause of complaints are *other* residents.

Our hope, and suggestion, is to move away from a view that pits musicians and venues against residents. As with the idea that the residential 'sector' is an economic entity in its own right, easily distinguishable from other activities and sectors in city, separating 'residents' from other stakeholders in the city is both divisive and counterproductive.

We would argue that assessments of genuine nuisance – as opposed to unfeasible criteria – also make for more suitable means of negotiating and assessing problems between residents.

To the claim that residents feel 'under siege' from festivals in the city. We sympathise with a sentiment that everyday activities can be disrupted but feel the need to point out that the licensing requirements pertain throughout the year and that our emphasis here is on local businesses and practitioners.

Furthermore, and overall, there is research indicating a broad degree of support for festival activities in the city. A recent study conducted by BOP Consulting – *Edinburgh Festivals Impact Study* – found 89% of locals agreeing that the Festivals increase their pride in their home city with 94% agreeing that 'Having the Festivals is part of what makes Edinburgh special as a city' (*Edinburgh Festivals 2015 Impact*

³⁰ Available at:

www.edinburgh.gov.uk/download/downloads/id/3263/soe_noise_pollution.pdf
www.edinburgh.gov.uk/download/downloads/id/3263/soe_noise_pollution.pdf

Study, p.12)³¹

City of Edinburgh Council's own research suggests the 78% of residents "believe the festivals make Edinburgh a better place to live" (*Edinburgh People Survey 2015*, p.93)³²

6.vii) NTBCC's invocation of the Human Rights Protocol and EU noise standards: NTBCC write,

"We note also Article 1 of the Human Rights Protocol, which entitles every person to the peaceful enjoyment of their property. At a time when the EU is looking at tighter noise standards, it is bizarre that the Council, who have a duty to protect their citizens, are even thinking of making it worse."

6. viii) Response

It isn't entirely clear whether the representation is referring to the European Convention on Human Rights or the subsequent (UK) Human Rights Act 1998, which enshrined those protocols in law here.

The emphasis in both is on the *state* not interfering with peaceful enjoyment of property, depriving a person of their possessions, etc. Whilst it does include within that the obligation of the state 'not to interfere': "it may also require positive measures to protect property to be taken. This is particularly the case where there is a direct link between the measures a property owner may legitimately expect from the authorities and the effective enjoyment of his or her possessions."

Both as well make mention of the balance between personal property and the 'general interest' – in other words property is subject to certain state interventions (e.g. planning permission) to protect the general interest.

This from *Human Rights Review*:

"Given the complexity of social and economic policy that affects property rights, the European Court of Human Rights may be reluctant to intervene and generally allows national authorities a wide 'margin of appreciation', meaning a degree of leeway to interpret its judgments in accordance with their domestic culture and traditions."

Elsewhere, Article 10 of the Universal Declaration of Human Rights notes the right to 'Free Expression' - the right to communicate and to express oneself in any medium,

³¹ Available at: http://www.edinburghfestivalcity.com/assets/000/001/964/Edinburgh_Festivals_-_2015_Impact_Study_Final_Report_original.pdf?1469537463

³² Available at: http://www.edinburgh.gov.uk/info/20029/have_your_say/921/edinburgh_people_survey

including through words, pictures, images and actions. This is a ‘qualified’ right – e.g. by things like national security, criminal law, etc. It might also be argued that the legislation and overarching European Convention cuts both ways on this and allows a lot of leeway to states and governments to interpret (as Westminster did in 2012 with the deregulatory Live Music Act³³).

Further, Article 27 of the Universal Declaration of Human Rights states, “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”

In short, the appeal to human rights protocols in the representation is rather vague and a simplification, at best. Human Rights apply broadly to citizens across a wide spectrum of activity and as general principles. Evidence and arguments can easily be produced to support the proposed change under these terms as well.

The claim about EU noise standards is also vague and unsubstantiated.

It is true that the EU is “committed to significantly decrease noise pollution in the Union, moving closer to levels recommended by the World Health Organisation, by 2020”³⁴. As with discussion of health concerns above (4.iii), however, the emphasis here is broadly on traffic and aircraft noise sources³⁵.

The EU’s European Environment Agency (EEA)’s report on *Noise in Europe* in 2014 has a similar focus. It does not cover entertainment noise, although does make mention of noise created by neighbours or at workplaces (p.6), to point out that these are covered “by other policy instruments both at national and EU level, such as those related to health and occupational safety” (European Environment Agency, *Noise in Europe*, p.6)³⁶

In other words, to link the proposed change in Edinburgh’s local licensing conditions directly to EU protocols is an emotive, but mistaken, reading of the situation.

³³ Available at: <http://www.legislation.gov.uk/ukpga/2012/2/contents/enacted>

³⁴ http://ec.europa.eu/environment/noise/policy_en.htm

³⁵ http://ec.europa.eu/environment/noise/sources_en.htm

³⁶ Available at: <http://www.eea.europa.eu/publications/noise-in-europe-2014>

7) MUSICIAN AND PROMOTER STATEMENTS

Bartholomew Owl (Keith Bartholomew)

"As a musician and promoter operating in the city, I see the current legislation to be the main factor that stifles the creativity and growth of the music scene.

I know of so many bars and venues that have had endless problems with noise complaints - and indeed have lost gigs due to venues closing or having to deal with restrictions. And that is not a problem financially. I describe myself as a musician but I gain no personal financial gain from performing in a band - the band pays for itself. Any profits go back into rehearsals, recordings or releases. To continue with the current system - which is wholly impractical and basically allows the council to pick and choose what culture is allowed and what they will shut down - makes Edinburgh a laughing stock in the eyes of more forward thinking cities around the world.

Bartholomew Owl (bands: eagleowl, Our Ladies of Sorrow. Promotion: The Gentle Invasion, and the Herald Angel award winning 'Retreat!' festival.)

Is that ok, or too "on the money"?

You could maybe add in 'co-author of "Don't Make A Scene: A Field Guide to DIY Gig Promotion", if you think that'll add any weight.

Clarissa Cheong

Having now lived in Edinburgh for 16 years, first as a student and now as an owner occupier, it saddens me to think that we have to work so hard to gain the right to have entertainment in the city and that our efforts are looked upon with suspicion. Many of us live in Edinburgh in permanent homes, working jobs in the city and sending our children to city schools.

We chose the city for it's culture and vibrancy and for it's ability to embrace international cultures. We could move into international histories of community, gathering and socialization around music but I don't think that this is what needs brought to attention, I'm sure that the people assigned to this consultation already have knowledge of the mountains of research related to the importance music has to play in the human psyche (human development, mental health, community growth, creativity, participation just to mention a few).

I think that people who live in cities have chosen to do so with the understanding that they live in the middle of hustle and bustle. I've just spent 4 weeks in the countryside. The quietest, remotest country spot still has the hoot of owls and the

chattering of insects. Inaudibility is ridiculous wording to have been used in the first place and impossible to achieve. To punish a grassroots community that has a very large part to play in keeping the city attractive and lively would be an unwise decision. Things have to change otherwise Edinburgh might forever be known as the Silent City Where Nothing Ever Happens.

Clarissa Cheong, aged 34

Member of the band eagleowl for over 10 years.

Sometime child-parent gig organiser, Rumpus.

Lecturer in Childhood Practice at Edinburgh College.

Parent of two small children and owner-occupier of a top floor flat above a noisy pub (which I have never made a complaint about, not even on Karaoke nights.)

Malcolm Benzie

I'm a musician from Edinburgh, and have been playing in local bands since around 2005. I've performed in lots of different styles, from rock and pop groups to live film soundtracks and art performances, and have been lucky enough to play at both the smallest and largest venues in Edinburgh, from Henry's Cellar Bar to the Usher Hall with groups like Eagleowl, Withered Hand, Rob St John. I also grew up in Edinburgh, attending gigs at the few small venues that have been available in the city over the years. Edinburgh has always had a problem with having enough venues to support a local arts scene, and those that we have are often too short-lived. Venues like Cafe Graffiti, Bristo Hall and The Bowery have all come and gone.

Without access to perform in venues like these, there's no way I would have been able to start playing music in the city, and I certainly would have missed out on many creative opportunities and connections. These venues were all central in creating a sense of artistic community and possibility in the city, and as each of them closed it felt like a blow to the local arts scene.

Meanwhile on the other side of the country, Glasgow manages to retain long-standing venues like King Tutts and Nice'n'Sleazys, which seem to stand for supporting new music, and have contributed to Glasgow's great international reputation as a music city. It seems ludicrous to me that a city like Edinburgh, so defined by creativity and the arts through the Edinburgh Festival, can be so unsupportive of local creatives.

I really hope the council will consider rewording the audibility clause, as I think it could really help protect Edinburgh's arts scene. With small venues available in the city, the local arts and music community could really thrive, and can give something back to the city.

Malcolm Benzie

Matthew Young

Dear Edinburgh Council,

I have been running Song, by Toad Records in Edinburgh for eight years, and the Song, by Toad music blog since 2004.

We are not huge, but our bands have played Glastonbury, done sessions for BBC 6Music and toured the UK, mainland Europe and the US. We've also been featured in the Guardian, Pitchfork, Mojo, Uncut and Drowned in Sound.

I strongly support getting rid of the inaudibility clause in the current noise legislation, and embracing the Agent of Change principle.

From the point of view of someone who works in the kind of music I do, Edinburgh is a very difficult place to work. It is basically a cultural wasteland, with the exception of a few very tough and very determined people who try their best to keep things alive. Bands don't come here, musicians don't stay, and the only reason someone like myself is still around is for personal reasons, certainly not professional ones.

The problem is really one of audience and self-image. Edinburgh is emphatically not a music city (dependent on genre of course - for mine it is not), so people interested in alternative pop music simply do not come here.

This makes it very hard to encourage a local audience, and the lack of a local audience makes it very, very hard to retain the good bands who do emerge here. There's no point bashing their heads against a brick wall in Edinburgh, when they can simply move to Glasgow for ten times more appreciation immediately.

There are good people working here however, but in order to change our most fundamental problem we desperately need to encourage more to happen. More gigs, more promoters, more venues, and try and encourage an audience to develop.

The burden of the current interpretation and wording of the rules has shut down venue after venue in this town, and caused promoter after promoter to give up, because it just isn't worth it.

How are Edinburgh bands supposed to form links with like-minded individuals in other cities if they can't reciprocate a gig exchange? How am I supposed to help develop the bands I work with if we can't get the word out by inviting people to play in Edinburgh and sending them away with good things to talk about.

This harms venues, it harms promoters, it harms local bands, it basically puts a massive handbrake on any attempts to grow Edinburgh's reputation as a music city, and any attempts to cultivate a music community here.

You don't have to do much to start encouraging this to change, either. Just get some of the shackles off and there are people here with the will and the work ethic to get things moving.

Yours,
Matthew Young

Owner: Song, by Toad Records, Bad Fun, Pale Imitation Festival.

Tim Brinkhurst - Soulpunk.

I am a music manager, producer and musician. I perform live occasionally myself.

It is still possible for me to stand, open mouthed as I see (and hear, just about) the direct results of interventions by CEC officers at live venues, during actual shows.

At The Mela, a once-a-year (previously) festival in a park when an officer has insisted that the front of house PA be turned off completely mid-set, leaving just the stage monitors as loudspeakers being drowned out by a baby's crying. Due to a lone complainer.

A sadly oblivious group, continuing to perform, once again, after the front of house PA has been turned off, being drowned out by conversation in The Mash House. Due to a lone complainer.

Arriving at The Bowery as two officers are leaving having told the management to prevent the audience dancing as they do not have the correct license for dancing.

Arriving at Sneaky Petes on the Cowgate, where thousands congregate every weekend to shout, scream, fight and puke and finding the venue shut because of a lone complainer.

Watching bouncers take the stage at Central Hall and stand in front of Young Fathers, making cut throat motions to stop performing because the venue has a lone complainer who had agreed not to complain if the music stopped at 11PM. It was 3 minutes past 11PM and the group were on their final song. The venue was worried about losing their occasional license and was happier ruining the evening's climax for over a thousand people in order to appease one person and the council.

And more. That the capital should have earned itself the reputation as a damp squib, year-round, when it comes to live music is shameful. Music is essential to culture and

culture is part of the human experience.

Nothing being proposed to improve the lamentable licensing and noise nuisance policies of the council is anything other than reasonable. There won't be hundreds of hard core punks screaming over massed drums and guitar in every pub. The only difference might be that, slowly, Edinburgh can begin to earn itself a reputation as a music city, as befits a capital of a country that loves music and understands its importance.

Andrew Richardson

DJ; Producer; Promoter (Limbo); Label Owner (Hobbes Music); Plugger (Black Spring PR); Marketing Manager (The Bongo Club).

I've been an independent promoter in Edinburgh since the late Nineties and the highly unpredictable nature of audiences, the business etc here has consistently forced me to find other ways to support myself. This difficult predicament (which I share with the majority of my colleagues/peers here) is principally due to the lack of a truly 'vibrant' local scene. In fact, Edinburgh is widely perceived in the broader music industry as one of the toughest cities for the business in the UK - the reason it is often overlooked/skipped when a serious band chooses its tour-dates.

"Why bother with Edinburgh when you're far more guaranteed a decent audience in Glasgow? The fans will travel to see you" (as spoken / thought by myriad agents/managers etc from outside Scotland over the years).

"Why bother with a night that champions a bunch of bands from Edinburgh? No decent bands have ever come out of Edinburgh" (a direct quote from a punter at the door in the early days of Limbo).

I have been combatting factors and perceptions such as these throughout my professional life.

On a related note, The Bongo Club (celebrating its twentieth anniversary this year and widely perceived as one of the cornerstones of the local music scene) operates as a trading arm of arts charity Out Of The Blue and thus any profits go to them, to benefit their / local artists' creative endeavours.

Plus:

1) The Bongo is currently paying off a rather large bank loan to finance the move to its current venue, in 2013 (following early eviction from its former venue by landlords Edinburgh University - the second time this has happened in the Bongo's lifetime, after its New Street home was demolished c.2003 and consequently lay scandalously derelict for another decade).

2) The Bongo currently loses two months of trading every year, including the key month of August, due to the Underbelly's historic tenancy of the same building taking precedence over it (with all permanent members of staff still salaried during this period), which is obviously a bit of a drain, too...

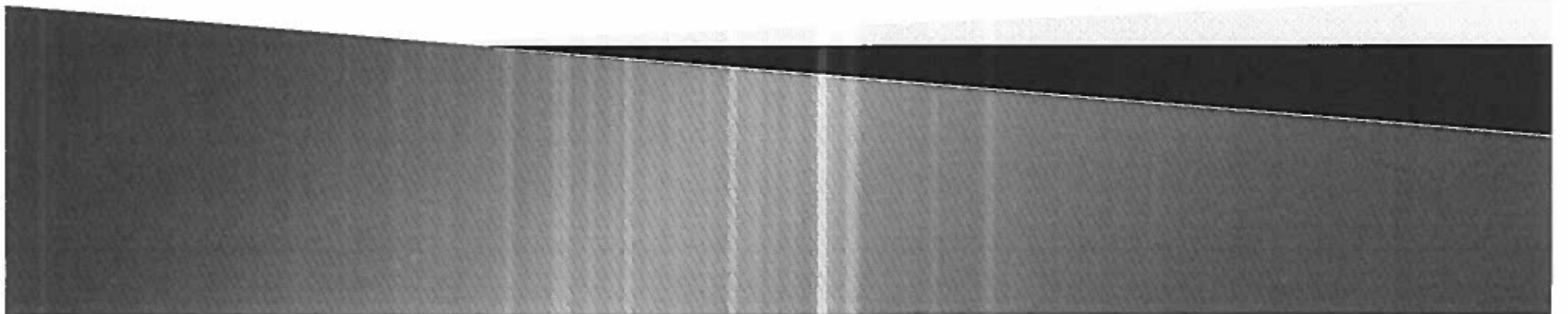
When a venue as established, credible and respected internationally as The Bongo Club still struggles to such an extent on a day-to-day level, it must surely be plain to see that something is truly amiss here? Why is Edinburgh capable of hosting the biggest arts festival in the world, celebrating international artistic talent on its doorstep, but not sustaining its very own creative practitioners to the extent that they become equally inspiring across the world over? Is it not obvious that such a policy will provoke even greater interest (and investment) in the city from tourists/visitors, young *and* old and, even more vitally, *all year round*?

A full reappraisal of the way local government treats grassroots Edinburgh music and related local culture is *massively* overdue. Please do not ignore this proposition.

Encouraging live music

Special meeting of Licensing Forum

1 December 2015



Introduction

- ▶ Cllr Norma Austin Hart, Chair of the Music is Audible Working Group
- ▶ Karl Chapman, General Manager of Usher Hall and lead Council official for Music is Audible
- ▶ Nick Stewart, manager – Sneaky Pete's and member of Music is Audible Working Group
- ▶ Neil Cooper, music journalist and member of Music is Audible Working Group

Introduction

- ▶ Picture House announced closure – July 2013
- ▶ Agent of Change petition – 2014
- ▶ Music Venue Trust formed in early 2014
- ▶ Young Fathers – July 2014
- ▶ Phoenix Bar 2014–15
- ▶ Live Music Matters and Music is Audible – Dec 2014



Music is Audible

- ▶ Set up in December 2014 after Live Music Matters meeting
- ▶ MIA has met four times
- ▶ Made up of councillors, officials, industry representatives
- ▶ MIA sub-group created in March 2015 to consider guidance for venues

Background

- ▶ 267 music venues in Edinburgh
- ▶ From 1 April 2014 – 30 June 2015: 64 complaints received linked to 18 venues
- ▶ All resolved before going to Licensing Board
- ▶ Three compliance notices issued and no requests to review licenses
- ▶ So what is the problem?

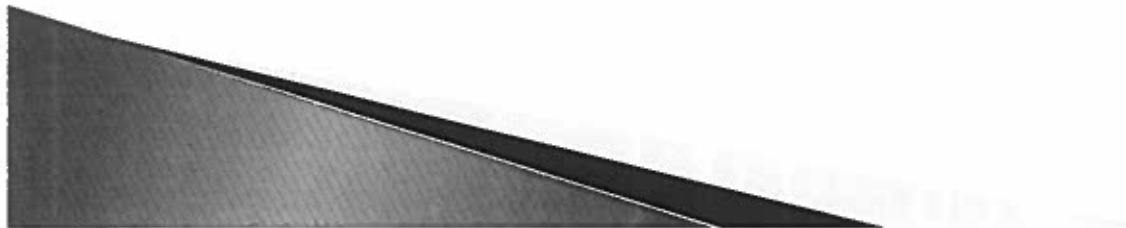


Edinburgh University Live Music Census

- ▶ 42% have experienced issues relating to noise
- ▶ 44% musicians reported gigs affected by noise restrictions
- ▶ Supports 335 non-musician staff

Edinburgh University Live Music Census

- ▶ 267 venues with 94 venues twice per week
- ▶ 23,000 gigs per annum not inc festivals
- ▶ Edinburgh audiences attend more live music gigs than Scottish average; 13% vs 6%
- ▶ Annual attendances of 2.7m people
- ▶ Most likely to go to rock music (61%) also folk (31%) and jazz (34%)
- ▶ Average annual spend £1120 pp/pa



Music Venues Trust

- ▶ Charity aims to safeguard the future of grassroots music venues
- ▶ Specialist consultancy working with cities across UK inc City of London
- ▶ Advises Mayor of London Music venues Taskforce
- ▶ Commissioned by MIA to produce report

MVT Report Recommendations to CEC

Recommendation 1

- ▶ Consider the **balance** between the contribution of the music venues to the cultural and economic life of the city and the needs of residents and includes this in its culture policy review



Recommendation 2

- ▶ Change the Licensing Policy wording from *‘The Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property’* to *‘Amplified music shall not be an audible nuisance in neighbouring residential premises.’*

Criteria recommended by MIA

- ▶ Impact
- ▶ Locality
- ▶ Time
- ▶ Frequency
- ▶ Duration
- ▶ Convention
- ▶ Importance
- ▶ Avoidability



Legal Issues

- ▶ Licensing Act objective: ‘preventing public nuisance’
- ▶ DEFRA could not reach a consensus on noise
- ▶ No legal definition of ‘nuisance’ in Licensing Act or Public health Act 2008
- ▶ Eight criteria are used to decide if a nuisance exists

Recommendation 3

- ▶ Council changes the terminology used in documentation to create a **more balanced approach** in working with residents and venues during mediation. For example, use the term 'clients' in a mediation process rather than 'complainant' and 'complainee'



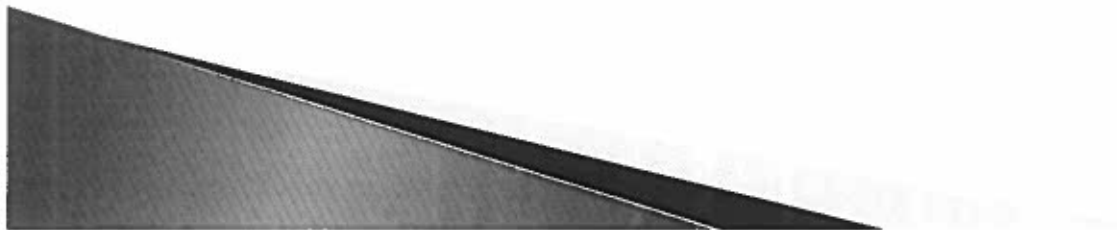
Recommendation 4

- ▶ Implement an **awareness-raising** campaign within CEC (members and officers) of the impact on the city of the potential negative impact of a noise complaint



Recommendations 5 and 6

- ▶ Encourage residents to **talk to the venue** about their concerns as a first step
- ▶ Provide all music venues with a **Guidance Note for Venues in the Event of a Noise Complaint** document



Recommendation 7

- ▶ Consider the local conditions in detail that relate to the **Agent of Change** (the right of the first occupant) and consult with the Scottish Government on the legal process required for legislative change to enable Edinburgh to be the first city in Scotland to adopt the Agent of Change principle

Recommendations 8 and 9

- ▶ Changing the **tone** of discussions about tensions and disputes between residents and venues by focussing on the factors that lead to the complaint and how to find a resolution rather than looking to blame one party or another
- ▶ Create a **checklist** for residents making complaints to assist in mediation and solution



Recommendation 10

- ▶ Explore the possibility of identifying a key person to act as a **music champion** to liaise between CEC and the music community going forward
- ▶ Boris Johnson announced a London Night Mayor on 23rd October 2015

Next steps

- ▶ Meeting with the Licensing Forum
- ▶ Conduct consultation with councillors, officials and community councils
- ▶ Further report and Action Plan



APPENDIX 5

Nicholas Fraser

From: Stephen Hajducki [REDACTED]
Sent: 20 July 2016 14:43
To: Nicholas Fraser
Cc: Jonathan Finn
Subject: Fwd: Licensing - Music is Audible
Attachments: Noise Representation.doc

Please find attached the New Town & Broughton Community Council's representation on the consultation over the Music Is Audible initiative.

Please acknowledge receipt. Thank you.

Stephen

MUSIC IS AUDIBLE – Representation by New Town & Broughton Community Council

We OBJECT to the proposal to replace ~~the current licensing condition~~ which requires amplified music to be *inaudible* in nearby residential properties with one which merely requires that it *shall not be an audible nuisance*. Our objection is based on the following reasons:

- the present condition is clear cut and readily enforceable, whereas the proposed condition is subjective – who decides what is a “nuisance”? Who arbitrates in a difference of viewpoint?
- supporters claim it will enable Licensing Standards Officers to make a “fairer and more balanced judgement”. In reality, it will have the opposite effect of making judgements more difficult and subjective, harder to resolve satisfactorily, and therefore open to judicial review
- the proposal is at variance with the Music Venues Trust recommendations that, when a venue opens up in an existing area, the venue operator as “agent of change” must ensure soundproofing
- although it is claimed that the inaudibility clause discourages musicians from performing in Edinburgh, no evidence has been produced to support this view. Indeed, the city has a thriving music scene. Venues which have failed have done so for commercial / management reasons
- research shows that exposure to persistent noise can lead to health problems – deafness and chronic stress is linked to heart attacks, strokes, high blood pressure and immune problems
- if Edinburgh’s policy is stricter than many other places, it reflects the need to protect the amenity of the unusually high residential component in the centre. This sector makes a valuable contribution to the economic health of the city, far greater than the music industry
- we note that the main agitation seems to be from venue proprietors rather than musicians, which suggests commercial motivation rather than altruistic support for the arts
- as other cities rediscover urban living, the Edinburgh policy could set the way forward rather than being perceived as outdated and restrictive

We expand on these points below.

Noise and Residential Amenity

Edinburgh is a thriving centre of the arts but is also unusual in the UK by having a very large residential population in the city centre. This keeps it alive and safe, and boosts the local economy by supporting shops and businesses.

However, residents often feel they live under siege from ever increasing numbers and ever extending hours of operation of leisure facilities, pubs and restaurants, and extra “festivals” run (often promoted and supported by those who live outside the central area) with little regard or concern for residents’ amenity.

Noise pollution – especially from neighbouring premises including late-night pubs and discos – is a huge concern. It is the biggest topic of complaint to the council. In trying to protect our environment, one of our few lines of defence is the Licensing Board’s condition requiring amplified music to be inaudible in neighbouring residential property.

It has been suggested that Edinburgh’s inaudibility condition is outdated and over-restrictive. However, as more cities regenerate their central areas and residential uses are returning, it could well be that our example will be seen as a sensible and workable model for other cities to adopt.

We note also Article 1 of the Human Rights Protocol, which entitles every person to the peaceful enjoyment of their property. At a time when the EU is looking at tighter noise standards, it is bizarre that the Council, who have a duty to protect their citizens, are even thinking of making it worse.

Edinburgh’s Music Scene

It is suggested that the inaudibility clause is not conducive to a flourishing music scene in the city. This claim is completely unsubstantiated. Edinburgh has always had, from the time of Robert Burns onwards, a lively music scene, and there are many suitable venues away from housing. The

examples given by the promoters of closures (eg the Picture House) which they imply were due to excessive restrictions, in fact failed primarily through commercial and management issues.

The Community Council has no issue with supporting live music; we are not against music in pubs, not even amplified music. However, music venues are just one of many activities within the city centre and must be operated responsibly without detriment to the rights and amenity of other users, including the considerable city-centre residential component.

It is also noted that the principal support to date has been from the venue operators and promoters, with no actual musicians present. This must raise the issue of whether the motivation is actually for the benefit of the music industry, or whether it is in fact driven by commercial pressures to relax amenity standards for less responsible operators; in fact, primarily to increase alcohol sales, contrary to Licensing's objectives on responsible drinking.

Music Venues Trust recommendations

The "agent of change" model has been raised in the various presentations. The Music Venues Trust (an organisation of venue owners and operators) clarifies this concept on its website; if a block of flats is built near an existing music venue, the developers should pay for soundproofing, whereas if a promoter wants to open up a new venue near existing housing he would be responsible. The suggested new wording for the policy carefully evades allocating responsibility, and is therefore contrary to the industry's own guidelines as well as creating a legal and administrative minefield.

Enforceability

The promoters intend the assessment of "nuisance" to be based on Government guidance for the Public Health etc (Scotland) Act 2008. This lists eight key issues to evaluate (impact, duration, location etc) – a complex and drawn-out procedure with strong elements of subjectivity and no guarantee of resolution, which could damage relationships between residents and venue owners.

The present condition is clear, easy to determine and enforce – the music is either audible, or it isn't. The proposal – "shall not be an audible nuisance" – is heavily subjective. Noise is unwanted sound, so by definition it is a nuisance. Musical tastes vary tremendously, and it is unacceptable for an individual to impose their preferences onto others without consent. The proposed changes shift the burden of proof to demonstrate a nuisance onto residents, rather than the present clear-cut definition.

Health Concerns

Studies from Berlin and elsewhere demonstrate links between excessive noise and physical and emotional health problems – stress, migraines, heart disease, blood pressure, anxiety, and mental fatigue. Apart from disturbed sleep, even quiet domestic activity can become impossible by a constant bass thud from neighbouring property. The effects of stress have outcomes ranging from aggression, domestic violence, through to increased work-related and traffic accidents.

In addition, most amplified music tends to be over-loud, resulting in premature hearing loss amongst participants, which in later years leads to isolation and depression.

Economic Impact

The promoters highlight the boost to the economy which the industry brings. Tourism and leisure, of which the music industry is part, is certainly a major player in the city's economy. But it is not as large as the residential sector. Tourists stay briefly and then move on; residents day in, day out, spend money in the city's shops, small businesses and pubs, creating jobs, maintaining historic buildings, supporting public transport, and much else besides. That is what keeps the city afloat. At present there is a finely balanced tolerance between the various uses within the centre. If increased noise pollution drives residents away, we will be left with the same barren crime-ridden streets as too many other cities.

APPENDIX 6



[REDACTED] Edinburgh
[REDACTED]

Licensing
The City of Edinburgh Council
249 High Street
Edinburgh
EH1 1YJ

By e-mail to LiquorLicensing@edinburgh.gov.uk

19 July 16

Dear Sirs,

**LICENSING (SCOTLAND) ACT 2005
CONSULTATION ON STATEMENT OF LICENSING POLICY: AMPLIFIED MUSIC IN LICENSED PREMISES**

The Southside Community Council are unwilling to support the proposed change without a system in place that will implement actions to avoid noise nuisance. There is currently no confidence in the system. If an effective system existed, then the wording could be decided by consultation between the residents who are likely to be affected, the council's licensing department staff, and the music and entertainment venues.

Effective enforcement is needed: A major concern of residents is that enforcement is not effective when noise problems arise. It is essential for this problem to be solved before any change is made. There is currently no sense that licensing applications are evaluated effectively so as to give a good chance that no nuisance will be created. There is also no clear information about what residents should do when a nuisance occurs, and residents have experienced such situations often, without obtaining effective enforcement of better behavior from the venues creating the problem, or the relief has been short-lived.

It is stated in the letter that "The Council encourages residents to talk to the venue about their concern as a first step and provide guidance to all music venues on their option in the event of a noise complaint". This appears one-sided, with music venues, but not residents, receiving guidance. The introduction of fixed penalty notices is a welcome improvement, but it is ineffective unless residents know how to act, and unless such penalties are

imposed, and seen to be imposed.

A first step towards improving the situation would be for a protocol to be developed to tell residents what to do in such situations, and what the time-scale will be for improvements to occur. It is clearly stated in the Public Health Act that a local authority must investigate any complaint of statutory nuisance from a person living in its area. Where the local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice on the person responsible. However, it is not clear how residents can make this happen, or how they can track/follow up to make sure that the abatement notice is served.

At present no effective mediation process exists. Community Council web sites could provide such information to residents, which could be updated as experience of a true mediation process is developed.

We believe that the community (perhaps the local Community Councils) should receive advance notification of noise-producing events, including contact details so that residents who experience nuisance are able to contact someone in charge at the time, and get the noise level reduced.

Control of numbers and locations of venues: a better environment for musicians and promoters in the city would appear to imply MORE venues, or more frequent events that could produce noise that is a nuisance to nearby residents. Serious noise nuisance occurs not only from music inside venues, but also from people arriving and leaving (and this is often accompanied by rowdy behavior and drunkenness, producing an extra nuisance) More music is profitable to the businesses, but may harm other businesses, such as hotels and guest houses. An increase should not necessarily be encouraged, particularly in areas of the city that include large proportions of residential property or tourist accommodation, such as the area covered by the Southside Community Council.

The Agent of Change Principle (that the person or business responsible for the change is responsible for managing the impact of the change) sounds simple, but again, effective enforcement of the proposed rules is essential.

Overall response and recommendations: the amended wording is an improvement in some respects, as it makes clear how a nuisance is defined, and could potentially lead to legally binding steps being taken against nuisance noise. However, merely changing wording will not effectively solve the problems, and other changes are also essential before a change could be supported

1. Clear system to deal with a venue or neighbor when problems arise to be developed and communicated to residents, and available on CEC and Community Council web sites.
2. Tracking system for following what is being done about complaints, so that timely action occurs and is seen to occur.
3. More effective consideration of applications for new licensed venues, and effective safeguards for neighbourhoods where new venues are unsuitable.

Yours faithfully,

Deborah Charlesworth (Secretary, Southside Community Council)

Licensing
City of Edinburgh Council
249 High Street
Edinburgh, EH1 1YJ

Grassmarket Residents Association
c/o Elspeth Wills
3 [REDACTED]
[REDACTED] [REDACTED]

CITY OF EDINBURGH COUNCIL
DEPARTMENT FOR COMMUNITIES

22 JUL 2016

LICENSING SERVICE

Consultation on amplified music in licensed premises

HIGH STREET LICENSING COUNTER

I am writing on behalf of GRASS (Grassmarket Residents Association) to express our opposition in the strongest terms to the proposed amendment to the Board's policy that amplified music should not be audible within neighbouring properties.

The grounds of our objection are as follows:

Late night noise has always been a major problem both from live music within pubs and from revellers spilling out from pubs into the streets. This is in part why the Grassmarket has been designated an area of 'over-provision' in terms of the number of licences granted.

In recent years noise levels have increased significantly due to ever later opening hours by catering premises, outdoor seating, the attraction of buskers using amplified equipment, tour groups etc to the area, noise pollution from traffic and the increasing use of the Grassmarket as an events space including amplified music.

In our many years of experience of dealing with noise from music in pubs, the problem rests largely with individual premises. Pubs which are well managed prove to be good neighbours investing in extraction systems and double/triple glazing to ensure that there is no noise leakage, siting stages away from opening doors and dealing sympathetically with residents' complaints. Unfortunately there are also badly managed premises where residents' complaints are met with a barrage of abuse. It is interesting to note that one of the premises most vociferous in its public support of the change is also one of the worst managed pubs in the area.

Council officers appear to lack teeth in implementing existing regulations. For example outdoor tables are supposed only to be used by customers eating food and have to be removed by 10pm whereas in practice customers can be found drinking outside pubs until after midnight. It is essential therefore that there is a clear regulation on amplified music not being audible in neighbouring premises rather than leaving it to a vague mediation process on a case by case basis.

The music sector which is promoting a change in the regulations appears to be made up largely of music venues rather than musicians themselves. The city has plenty of locations where musicians can perform without disturbing nearby residents. 'This proposed wording would create a better environment for musicians, promoters and residents' – we should strongly contest the last category.

The reason for the low level of complaints can be simply explained by most residents tackling issues directly with the venue, being reluctant to bother the police or finding that complaints have not been effectively dealt with.

The reasons for recommending change seem weighted in favour of tourists rather than residents eg 'Raise awareness (for councillors and officers) on the impact noise complaints have on the city's cultural and economic environment.' This surely has to be balanced by factors relating to residential amenity.

In short, the right of residents to a peaceful night's sleep has to take precedence over the desire to encourage tourists to have an alcohol fuelled night out. As a community GRASS urges the Board not to make this change and to remember that the role of the Council is primarily to serve the interests of its residents.

Yours sincerely

A blacked-out signature, likely of Elspeth M Wills, consisting of several horizontal strokes.

Elspeth M Wills

Member of GRASS Committee

APPENDIX 8

Nicholas Fraser

From: Pam Barnes [REDACTED]
Sent: 24 July 2016 23:21
To: Liquor Licensing
Subject: consultation on amplified music
Attachments: Stockbridge and Inverleith CC - commentson Consultation on amplified music july 22nd 2016 .pdf

To the Clerk of Licensing

Please find attached Stockbridge and Inverleith Community Council's comments on the Consultation to the proposed changes in conditions for licence for amplified music.

I apologise for not being able to get this to you by midnight on friday the 22nd July. It was written but I was having trouble with my computer. I know that you have discretion to accept late comments and I hope you will be prepared to do that as any email sent on Friday evening or any time over the weekend would not be picked up by your department until Monday morning so I hope you will not have been inconvenienced in any way.

I would be grateful if you would confirm that you have received it.

Thank you for your help.

With best wishes

Pam Barnes

Planning Officer Stockbridge and Inverleith community Council

[REDACTED]
Edinburgh [REDACTED]

Tel: [REDACTED] or [REDACTED]

Stockbridge and Inverleith Community Council



22nd July 2016

Licensing Board Consultation - Amplified Music In Licensed Premises

Stockbridge and Inverleith Community Council objects to the proposal to change the policy on amplified music in licensed premises. The present condition that requires amplified music to be "*inaudible*" to nearby residential properties should not be replaced with "*should not be an audible nuisance*".

The present policy gives better protection to the amenity of local residents as it is simple to apply, to understand and to enforce. The new policy would require interpretation of the meaning of "*nuisance*" which will make it less easy to enforce and will produce more argument, disagreement and legal challenges.

Furthermore we see no reason for this change as we have been informed that since 2012 there has been no review of any licence for a breach of the current condition on noise from amplified music. We would point out that there is no evidence that the present condition on amplified music is having an adverse effect on the music industry in the city - indeed the industry is clearly thriving. Edinburgh is vibrant with events which have amplified music during the Festivals, the New Year celebrations, and increasingly, at weekends throughout the year.

The present policy exists to protect residents living in the large number of residential buildings that are to be found in the central area of Edinburgh close to licensed premises. Indeed, even further out from the centre, in places like Stockbridge (a designated '*town centre*') there are also large areas of residential property interspersed amongst the thriving restaurants, pubs and shops and those living in these residential areas are better protected by the present condition.

We also note that the Police Scotland oppose the change in this condition.

For the reasons outlined above Stockbridge and Inverleith Community Council asks you not to weaken the present licensing system as it will adversely affect the protection of local communities from noise of amplified music in their areas.

Yours sincerely

Pam Barnes

Planning Officer for Stockbridge and Inverleith Community Council

Tel: [REDACTED]

17 June 2016

Nick Fraser
Depute Clerk of the Licensing Board
The City of Edinburgh Licensing Board
Business Centre 2.1 Waverley Court
4 East Market Street
Edinburgh EH8 8BG

Dear Mr Fraser

Consultation on amplified music in licensed premises

Morningside Community Council objects strongly to the proposed amendment to the Edinburgh Licensing Policy with regard to amplified music. We believe that the current policy is clear, objective, easily testable and offers a valuable protection to residents living close to licensed premises. The proposed change would replace this with a subjective assessment based on a complicated evaluation by already hard-pressed Licensing Standards Officers. Decisions could be open to dispute and we fear that the extra difficulty of pursuing complaints would seriously reduce the likelihood of affected citizens obtaining redress. It seems to us that the existing regulation is one of the very few where a resident subjected to noise and disturbance can have a direct impact on licensing conditions. We would consider it a retrograde step for the Licensing Board to remove this right in the commercial interests of the licensed trade.

We take issue with several of the points made in the paper advancing the views of the "Music is Audible" group. We do not in any way regard the proposed change as "enhancing" the Policy and, considering that Edinburgh is acknowledged as one of the great cultural cities of the world, we challenge the assertion that the existing policy is "not conducive to a flourishing live music and cultural scene". The further assertion that "the proposed wording would create a better environment for musicians, promoters and residents in the city" is probably correct with respect to musicians and promoters but, in our view, quite untrue with respect to residents.

The paper states without explanation or context that "The Forum were also made aware of the low number of noise complaints ... and further that no premises has had their premises licence reviewed for breach of the noise condition since 2012". If the implication is that these facts make the current regulation redundant or unimportant, we would strongly disagree. We would rather interpret them as indicating that the regulation works well by deterring transgression through its unequivocal nature.

We find the proposal to change terminology "so that both venues and residents are seen as clients in a mediation process" objectionable. While we commend the efforts of LSOs to mediate in disputes, there has to be a basic distinction between a commercial operator who breaks the rules and the victim whose peace and comfort are compromised as a result. We

tel: **[REDACTED]**

website: www.morningside.org.uk
email: **[REDACTED]**

find the "Agent of Change" principle equally objectionable in that it removes the right of such a victim to seek redress. The principle is explained as "a resident who moves next door to a music venue would, in law, be assessed as having made that decision understanding that there's going to be some music noise". This does not account for the level of noise, or what level of investigation the resident has to carry out before moving in. It is imprecise, blurs the issues involved and raises the prospect of expensive litigation. To state that "The Agent of Change Principle is not complicated or controversial, it's simple common sense" is disingenuous and misleading.

Yours sincerely,

A large area of the document is redacted with heavy black scribbles, obscuring the signature and any text that might have been present.

Dr S C Gregory
Secretary
Morningside Community Council
by e-mail

APPENDIX 10

Nicholas Fraser

From: EACC Secretary ([REDACTED])
Sent: 21 June 2016 10:40
To: Liquor Licensing
Cc: [REDACTED]
Subject: Re: Edinburgh Licensing Board - Consultation on Amplified Music in Licensed Premises

Dear Mr Fraser,

The Office Bearers of Edinburgh Association of Community Councils supports Morningside Community Council's position with regard the Consultation on amplified music in licensed premises.

There was not sufficient time to fully discuss the matter at our last meeting, however it is generally felt that EACC now needs to be more closely involved with Licensing matters.

Regards

David

David K R Bewsey
Secretary
Edinburgh Association of Community Councils
[REDACTED]
Edinburgh
[REDACTED]
tel [REDACTED]
mob [REDACTED]
email [REDACTED]
website: <http://www.edinburghcommunitycouncils.org.uk>

APPENDIX 11

Nicholas Fraser

From: Colin Christison ([REDACTED])
Sent: 07 July 2016 19:18
To: Liquor Licensing
Cc: Nicholas Fraser; Cameron Rose; Ian Perry; Jim Orr; Steve Burgess; Alison Johnstone; Andy Wightman; Gordon Lindhurst; Jeremy Balfour; Kezia. Dugdale. msp@parliament.scot; Miles Briggs; Neil Findlay; Ruth Davidson; Tommy Sheppard
Subject: Consultation on licensing policy about amplified music
Attachments: SA response to consultation on licensing policy re amplified music 7.7.16.docx

Please see the attached letter on the above subject from the Southside Association. I should be grateful for an acknowledgement from Licensing.

Thanks,

Colin

Colin Christison
Chair/Secretary
The Southside Association

[REDACTED]
[REDACTED]
[REDACTED]

www.southsideassociation.co.uk

THE SOUTHSIDE ASSOCIATION

~~XXXXXXXXXX~~
Edinburgh
~~XXXXXXXXXX~~

Founded 1972 Scottish Charity No SCO12262

www.southsideassociation.co.uk

Licensing
The City of Edinburgh Council
249 High Street
Edinburgh
EH1 1YJ

By e-mail to LiquorLicensing@edinburgh.gov.uk

7 July 2016

Dear Sirs

**LICENSING (SCOTLAND) ACT 2005
CONSULTATION ON STATEMENT OF LICENSING POLICY
AMPLIFIED MUSIC IN LICENSED PREMISES**

The Southside Association submits the following comments on the above consultation.

The main proposal which recommends changing the existing wording to "amplified music shall not be an audible nuisance in neighbouring residential premises" is not acceptable.

We do not agree that the wording should be altered. From the Southside's point of view, there are already enough problems with noise from venues of various sorts, and many of these problems go unreported because people feel that little or no action is taken to prevent them. The Council's own records on noise nuisance are seriously understated. Overspill from premises with people chatting and smoking outside worsens the noise problems, and the echoing effect from high buildings adds to this.

Your suggestion that the proposed wording would create a better environment for musicians, promoters, and residents in the city and that an updated policy would provide clearer guidance for LSOs to assess noise nuisance created by music makes no sense. Noise nuisance is subjective. Noise is either audible or not. Does the Council have the resources to engage and utilise LSOs to cover such a large city centre area over late hours? Relaxing the policy will make noise nuisance worse, and mediation is not an appropriate response to noise from pubs.

There is no distinction made between amplified recorded music and amplified live music such as ceilidhs and karaoke.

Since when is Council policy partially guided by music promoters? And why is one particular Councillor pushing these recommendations forward? There is a distinct lack of neutrality about the whole matter.

Comparison between Edinburgh and Glasgow is inappropriate. Edinburgh's city centre and the urban surrounding areas are densely populated. Most people live in tenements and many of the flats are above shops or pubs. Glasgow city centre by comparison has very few residential properties. We do not believe that the Edinburgh musical world loses out to Glasgow; both cities have a rich arts culture, with a natural leaning towards certain genres in each city.

These measures will not create a better environment for residents in the city. This is about change, and not for the good. It isn't about promoting 'live music' but about relaxing the rules for venues which are noisy.

The Association trusts that these concerns will be considered by the committee.

Yours faithfully

By e-mail

C E C

Chair, Southside Association

APPENDIX 12

Nicholas Fraser

From: Paul Beswick [REDACTED]
Sent: 30 June 2016 15:50
To: Liquor Licensing
Subject: Amplified music consultation
Attachments: Amplified music consultation.docx

Dear Mr. Fraser,

I have attached a representation from Tollcross Community Council on the consultation on changes to the regulations on amplified music.

Kind regards, Paul Beswick

Paul Beswick (Chair Tollcross Community Council)
[REDACTED]

TOLLCROSS COMMUNITY COUNCIL

EDINBURGH

30 June 2016

Mr Nick Fraser
Depute Clerk of the Licensing Board
The City of Edinburgh Licensing Board
Business Centre 2.1 Waverley Court
4 East Market Street
Edinburgh EH8 8BG
LiquorLicensing@edinburgh.gov.uk

Dear Mr Fraser,

Consultation on amplified music in licensed premises

After consultation, Tollcross Community Council would like to object strongly to the proposal to amend the Edinburgh Licensing Policy on amplified music. It seems that the drive for this change is not from the widespread music community but from licensed premises wishing to limit their responsibilities.

1. The statements about there being few complaints and an inhibition of the music scene have been interpreted as evidence for change. A more realistic interpretation is that there are few complaints because the system works well. When examining Edinburgh's extensive and world class music scene with large successful festivals, it is difficult to suggest that it is inhibited in any way.
2. The current wording is clear, unambiguous and easy to monitor and enforce. Introducing subjectivity into the rules would lead to difficulties in interpretation, disputes, and substantial work on the part of the Council with little real redress for residents.
3. The 'Agent of Change' principal, whilst appearing a sensible legal framework, is highly problematic. We cannot realistically expect all prospective residential purchasers, residents or venue owners to have this principle firmly in their thoughts. Furthermore, we should not expect residents to have to resort to law to protect their residential amenity.

4. Having residents reduced to clients who have to resort to mediation to uphold their rights is also problematic. There is no need to create extra work and cause distress to residents.

In summary, it is a very poor idea to replace a system that works well, with one that is subjective and leads to uncertainty and potential lack of redress for residents. Furthermore, it would lead to substantial extra work for licencing Standards Officers and cause alienation of residents when other 'client's' interests appear to trump their own. This proposal has all the hallmarks of the requirements of the Music is Audible group and little concern for residents. The proposal is partisan and reinforces the views of one side.

We hope that our concerns can be addressed and that this proposal will not be approved.

Yours Sincerely,

Paul Beswick (for Tollcross Community Council)

APPENDIX 13

Nicholas Fraser

From: Scottish Licensed Trade Association [REDACTED]
Sent: 22 July 2016 15:27
To: Liquor Licensing
Cc: [REDACTED]
Subject: LICENSING BOARD POLICY CONSULTATION



In my capacity as President of the Scottish Licensed Trade Association, representing nearly 100 licensed premises in the Edinburgh Licensing Board area, I refer to the current consultation on "Statement of Licensing Policy – Amplified Music in Licensed Premises".

The Edinburgh Licensing Board's current regulations on amplified music is unique to Edinburgh and as Scotland's top tourist destination and capital of culture creates a disadvantageous anomaly in comparison to other areas in Scotland. Edinburgh is Scotland's most visited City and is in the top 25 destinations in Europe according to the 2016 Trip Adviser Awards. With over 75% of these visitors visiting a Public House, the licensed trade business sector plays a vital role in Edinburgh and indeed Scotland's Tourism Industry.

Our members and the Licensed Trade in general only seek parity with the conditions imposed by other Licensing Boards in Scotland on the issue of amplified music in licensed premises. We are supportive of proposal (b) to amend the current policy to *"Where relevant representations are made, the Board will make an objective judgement as to whether other conditions may need to be attached to a licence to secure achievement of the licensing objectives. Any such conditions will be consistent with section 27 of the Act. Any conditions arising as a result of representations will primarily focus on the impact of the activities taking place at the licensed premises, on those attending the premises and members of the public living, working or engaged in normal activity in the vicinity of the premises, and will cover matters that are within the control of the licence holder. In particular where the operating plan indicates that music is to be played in premises, amplified music.....shall not be an audible nuisance in neighbouring residential premises"*.

This wording will give the board the opportunity to discuss any problem related to amplified music and make a considered and reasoned decision to resolve any disputes. Licensing Standards Officers have been able to settle almost all of the problems that arise through negotiation, so it would seem sensible to allow the board to discuss any reasonable proposal from a premises and give the board the opportunity to use their valued knowledge in these matters to come to the correct decision.

Currently there are no best practice procedures in place and this should be addressed immediately so that all licensees would be able to understand the problems that can be created by amplified music and therefore evaluate the best way to alleviate any such problems before they occur.

At present licence holders must show due diligence at all times and it is their vicarious responsibility to act responsibly. The introduction of a best practise guide would better regulate amplified music and allay the fears of Forum Members and Board Members that making these changes would allow licensed premises to operate amplified music to the detriment of others in the neighbourhood.

It must be remembered that Edinburgh's Bars and Pubs not only play a vital role in the city's tourism market, but also play an important part in supporting the local community based on the reliance of goodwill from neighbouring dwellings to maintain our livelihood.

The Licensing Forum has also discussed the proposal of "Agent of Change". This would allow premises to both invest in their business and Edinburgh's tourism future without the worry of a new neighbour having a biased advantage should any noise pollution problems occur. Presently, licensees who have had amplified music on their premises for several decades, without any complaints, could face the possibility of this being stopped should a new neighbouring owner or tenant who, in their opinion, raises an objection to any noise emanating from licensed premises. Currently, any rectifying actions, such as soundproofing would be expected to be undertaken and paid for by the owners of the licensed premises.

If an owner or tenant seeks to buy or rent a house in close proximity to a Bar or Pub there has to be a presumption that there will be some noise associated with the licensed premises. In fact the valuation of the house or flat will be somewhat lower because of these circumstances.

The introduction of the "Agent of Change" clause would allow the licensed premises the comfort of knowing that whoever was insitu the longest would be fairly treated in law.

In our opinion these conditions are long overdue and would enhance Edinburgh's Hospitality Industry and educate license holders in the rapidly changing environment of all of Scotland's Bars, Pubs and Hotels.

I hope you will look fairly on our observations and I would be happy to take part in any future discussions with all concerned parties.

Yours sincerely,

Marshall Bain
President
Scottish Licensed Trade Association

The Scottish Licensed Trade Association
CBC-House, 24 Ganning-Street,
Edinburgh EH3 8EG
Tel: 0131-272-2773
www.theslta.co.uk

Scotland's Pubs and Bars - A Story To Tell
www.scotlandspubsandbars.co.uk

APPENDIX 14

Nicholas Fraser

From: Jack Hunter [REDACTED]
Sent: 04 July 2016 11:53
To: Liquor Licensing
Subject: Jack Hunter, Leith Theatre Trust - Live Music - noise policy
Attachments: LTT - Comments on Noise Policy.docx

Dear sir/madam
I attach our comments.

Best wishes
Jack hunter
Chair of Leith Theatre Trust

Leith Theatre Trust
Thomas Morton Hall
28-30 Ferry Road
Edinburgh
EH6 4AE

27 June 2016



Dear Sir/Madam

On behalf of Leith Theatre Trust, who run and manage the Leith Theatre complex at Ferry Road, I would comment on the proposed amendment to the Noise Control Policy as follows.

1. The proposed new wording should replace the current wording.

i.e. "Amplified music... shall not be an audible nuisance in neighbouring residential premises".

2. The judgement on whether it is a "nuisance" or not requires careful consideration, as one person's "nuisance" is another person's "appropriate" or "acceptable".

3. The underlying aim in any such considerations should be to seek to enable the amplified live music to continue, not to shut it down as quickly as possible. This will require discussion, negotiation and compromise between the venue, the neighbours and not forgetting the musicians. The concept of reasonable and shared interest needs to be applied.

4. As evidenced, live music is a major economic activity/visitor attractor for Edinburgh as well as supporting the development of the arts, of education and enriching the local and artistic community.

5. The Council needs to safeguard wider interests against perhaps one or two individuals, living locally to a venue, which may have been there for many years, and who simply are not prepared to be reasonable.

I personally know of an individual who called every Saturday to complain about the noise from a venue - even when there was no band playing that evening.

6. Many venues/bars respond to a complaint from a neighbour or visit from a council official (who may not even have heard the music concerned) by stopping any further amplified music.

Venues /bars need to know that the ethos behind the policy is, where at all possible, to enable live amplified music to continue.

Communication, negotiation and compromise needs to be encouraged and supported. In this respect, some form of council-led mediation would be helpful.

If I can be of further assistance do let me know.

Yours faithfully

Jack Hunter

Chair of Leith Theatre Trust

APPENDIX 15

Musicians'
Union

Scotland & N Ireland
1 Woodside Terrace
Glasgow G3 7UY

T 0141 341 2960
F 0141 332 8709
E glasgow@theMU.org

w theMU.org

Licensing Board
Licensing
City of Edinburgh Council
249 High Street
Edinburgh
EH1 1YJ

THE CITY OF EDINBURGH COUNCIL
SERVICES FOR COMMUNITIES

03 MAY 2016

LICENSING SERVICE

THE CITY OF EDINBURGH COUNCIL
SERVICES FOR COMMUNITIES

03 MAY 2016

HIGH STREET LICENSING COUNTER

29/04/2016

Dear Sir/Madam

Re: City of Edinburgh Licensing Board Consultation on Amplified Music in Licensed Premises

I am writing on behalf of the Musicians' Union in response to the City of Edinburgh Licensing Board consultation on the Licensing Board's policy on amplified music in licensed premises.

The Musicians' Union is the trade union for professional musicians representing over 30,000 members working in all areas of the music industry across the UK. The vast majority of our members count live performance as one of their main areas of income in this diverse industry.

Having been involved in the Music Is Audible working group from its inception, the MU is deeply concerned about the detrimental impact the current 'inaudibility' clause has on the provision of live music for Edinburgh and further to this, the impact it has on opportunities for professional musicians to work in the city.

The clause in question impacts significantly on grassroots live music venues in particular which are important cultural spaces in their own right where musicians are able to develop their craft and where audiences discover new music. Further to this, these venues have an important role to play in the cultural and socio-economic life of the city.

We fully acknowledge and appreciate that local residents have a right to live in a peaceful environment, however it is our strong opinion that live music should not be automatically seen as a 'nuisance' and that this particular clause should be reworded in



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Page 2

order to strike a better balance between the city's live music culture and the requirements of the residents.

Currently, the 'inaudibility' clause coupled with the absence of the 'Agent of Change' principle (or similar planning legislation which might protect venues), essentially ensures that the live music venue is constantly in the firing line and at risk of potentially losing its licence or having to stop putting on live music - often because of only one or two complaints. However, the process which we understand the LSOs currently have to go through does not allow the flexibility required for proper mediation and to strike a fairer balance between the live music scene and local residents.

Edinburgh has a rich musical history and is world renowned for its art and culture, and so to allow such important cultural spaces to continue to go unprotected and for them to be subjected to such punitive measures seems an untenable position to maintain.

The Musicians' Union urges the Licensing Board to strongly consider the rewording of this policy.

Yours sincerely,

A blacked-out signature, likely of Caroline Sewell, used to redact the name of the sender.

Caroline Sewell
Regional Officer

APPENDIX 16

Nicholas Fraser

From: Traditional Music Forum [REDACTED]
Sent: 11 July 2016 15:52
To: Liquor Licensing
Subject: Consultation on Amplified Music in Licensed Premises

Dear Sir/ Madam

I write on behalf of the Traditional Music Forum (a network of around 90 traditional music organisations across Scotland, including many in Edinburgh) in favour of the amendment to the current licensing conditions, viz. that "Amplified music..."...shall not be an audible nuisance in neighbouring residential premises'.

This seems to us to allow venues more flexibility while taking account of the different levels of tolerance that may obtain among local residents. In addition the addition of the 'Agent of Change' principle is a more equitable way of achieving outcomes that are acceptable to both venue owners and promoters and residents.

We would support the amendment.

Yours faithfully

David Francis
Chief Executive

Traditional Music Forum

www.traditionalmusicforum.org

t: [REDACTED]

e: office@traditionalmusicforum.org

Twitter: @TradMusicForum

The Traditional Music Forum is a Scottish Charitable Incorporated Organisation (SCIO), Scottish charity no. SC042867

The Traditional Music Forum is a member of TRACS (Traditional Arts and Culture Scotland), a SCIO, no. SC043009

Councillor Eric Milligan
Room 3.09
City Chambers
High Street
Edinburgh
EH1 1YJ

Date 9 August 2016

Our ref LH/KC

Dear Councillor Milligan

Edinburgh Licensing Board – consultation on amplified music in licensed premises

I am writing in my capacity as Director of Culture on behalf of the Culture Service, to offer our viewpoint on the proposed amendment to the condition attached to licensed premises that currently requires amplified music from those premises to be inaudible in residential property. Whilst this is a condition that the Board can 'consider' attaching, it appears to be almost routinely applied and accepted by venues wishing to gain a licence.

You will, of course, be aware from your position on the Culture and Sport Committee that a considerable amount of time and energy from our service has gone in to supporting the *Music Is Audible* short life working group established by the Committee to look into this issue.

Our position is that we support the view of the music sector in Edinburgh which reports that the current condition is not conducive to nurturing a flourishing live music and cultural scene. These views have been echoed by numerous others – the grass roots cultural scene through the *Desire Lines* process and Cultural Policy Review, the *University of Edinburgh's Live Music Census* conducted in June 2015, and the report by the *Music Venues Trust*, which was commissioned by the Council. We also understand that there has been considerable feedback in favour of the proposed amendment through the recent consultation process.

Lynne Halfpenny, Director of Culture, Place, City Strategy and Economy

Level 2.6 Waverley Court, 4 East Market Street, Edinburgh EH8 8BG

Tel 0131 529 3657 lynne.halfpenny@edinburgh.gov.uk



INVESTORS
IN PEOPLE | Gold

We feel that the suggested amendment is a practical and reasonable solution, developed by a music and cultural sector that wants a positive environment for its work and a fair balance to co-exist alongside residential neighbours. Music is an audible art form and the proposed wording that amplified music 'shall not be an audible nuisance in neighbouring residential premises' is practical and rooted in law – it offers guidance taken from the Scottish Government issued to accompany the Public Health (Scotland) Act 2008, and provides a framework of guidance for our LSO's in assessing complaints – impact, locality, frequency, duration, convention, importance and avoidability. Indeed, these appear to be definitions which are applied during the Festivals period, a point made frequently by the sector during the course of this project and we are seeking to secure this positive interpretive attitude for all twelve months of the year going forward.

We are aware that this amendment to our Licensing condition is one part of a package of measures aimed at encouraging live music in the city but is a very significant one – support for the changed statement and practice would illustrate the city as an enabler, a listener eager to foster an environment for culture to thrive at all levels in a rapidly changing world.

The work we have carried out, commissioned and supported, reveals a range of issues that in the medium to long term can be seen as worrying trends for cities wanting to embrace successful cultural practice and celebration: the increasing gentrification of urban environments means that artists find it harder to live and produce work in the city environment; increasing rents and low wages for artists; lack of access to adequate rehearsal and performance spaces.

It has also highlighted the sensitivities around this issue from all sides, as our recent consultation with Community Councils and the Licensing Forum demonstrates. On balance we do not feel that the music and wider cultural sector is seeking to create a nuisance, rather enable a more considered playing field that will allow both parties rights room to coexist.

As local authorities we have a duty to all of our residents and feel that the proposed amendment would offer a sensible way of managing the provision of amplified music in our city.

Should the Board wish to consider a trial period of say 18 months to 2 years under the revised proposal, this may offer a degree of comfort to all parties that the situation could be monitored and considered further on practical evidence.

If I or my colleagues can offer any further assistance in your consideration of this matter, please do not hesitate to contact me.

Yours sincerely



Lynne Halfpenny
Director of Culture