

To:	Licensing Section, PO Box 17013, Birmingham B6 9ES	Date: 11th April 2017
From:	Mr Gerg Jambor, Environmental Protection Officer Environmental Health, PO Box 16977, Birmingham B5 5BD	Tel: 0121 303 9975
Subject:	Application for Variation of Premises License – Licensing Act 2003 Address – Ana Rocha Bar & Gallery, 48 Frederick Street, Birmingham B1 3HN	

I, Mr Gerg Jambor, as a representative of Environmental Health, formally raise a representation to grant of the above application.

My representation concerns the likely effect of the grant of the licence on the promotion of the following licensing objective(s): the prevention of public nuisance

The Prevention of Public Nuisance

I am concerned that the grant of the licence would undermine this objective.

The reason for my concern is that the premises does not have any sound insulation and provides regulated entertainment.

This concern is based on investigation of a local resident's complaint received on 20 February 2017, which has culminated in the service of an abatement notice on the Licence Holder (11 April 2017).

I believe that this concern can be dealt with by the use of appropriate conditions. If the licence is granted the condition(s) I suggest to deal with this concern are conditions references C1 to C5 below.

Recommended Conditions

- C1 – The provisions of the Live Music Act shall not apply to this premises.
- C2 – External disposal of bottles shall not be done after 19:00 hours.
- C3 – No licensable activities shall take place until sound insulation to the premises has been installed to the written satisfaction of Birmingham City Council Environmental Health.
- C4 – No regulated entertainment shall take place at the premises until a sound control device through which amplified sound shall be played has been installed to the written satisfaction of Birmingham City Council Environmental Health.
- C5 – Doors and windows at the premises shall be kept closed other than for access and egress. The rear door shall only be used in the event of an emergency.

In light of the matters set out above I have no objections to the licence being granted provided appropriate conditions are imposed to deal with the concerns raised.

Documents I may wish to refer to during a hearing:

Complaint investigation history

Email to applicant 22/03/17 14:53

Email to applicant 24/03/17 09:29

Reply to email from applicant 31/03/2017 09:07

Reply to email from applicant 04/04/2017 15:49

Email to applicant 06/04/2017 15:19

Reply to email to applicant 07/04/2017 08:37

Reply to email to applicant 07/04/2017 10:55

Abatement Notice 11/04/2017

Complaint investigation History

1st letter to Subject 22/02/2017

Diary from Citizen 06/03/2017

2nd letter to Subject 07/03/2017

Call to RRR cancelled en route 17/03/2017 22:00h

Citizen representation received 21/03/2017

Noise recorder installed 21/03/2017

Site meeting 22/03/2017

Email to Subject regarding licence variation 22/03/2017 * (appl...)

Call to RRR noise ceased just before arrival 24/03/2017 22:56h

Video from Citizen 24/03/2017 (taken Saturday 11th March 23:50h) * (IMG 8474)

2nd email to Subject regarding licence variation 24/03/2017 * (RE: appl...)

Noise recorder collected 29/03/2017

Replied to email from applicant forwarding Citizen's video and warning of recordings
29/03/2017

Reply to email from Subject regarding complaint 31/03/2017 * (Re: WK/00...)

(3 videos total sent by Subject)

Call to RRR nuisance witnessed from music and crowd after noise level reduced ca. 23:30h
(01/04/2017)

Discussion with Landowner (04/04/2017)

Reply to email from Subject (04/04/2017) * (RE: Ana...)

Noise recordings reviewed:

- Extractor fan constant 29-30 dBA
- Music noise samples, masked a little by extractor. Live music 30-40 dBA +, recorded music a little lower but more "beaty"
- Windows closed throughout recordings

Updated diary from Citizen 06/04/2017

Emails to Subject (06/04/2017 & 2 on 07/04/2017)

Abatement Notice served 11/04/2017

Gerg Jambor

From: Gerg Jambor
Sent: 22 March 2017 14:53
To: p.jambor@ltd.com, hellow@ltd.com
Cc: ana.rocha@ltd.com
Subject: application to vary premises licence: ana rocha, 48 frederick st, birmingham

Dear Peter

Thank you and colleagues for your time during our meeting this morning regarding the above.

I can confirm that I have spoken to the resident who has complained about noise disturbances. Her initial indication is that she would be favourable to withdrawal of her representation subject to the agreements discussed at our meeting.

In summary, the agreements were as follows:

- Removal of regulated entertainment from the application
- Prohibition of bottle disposal after 1900 hours
- Keeping the fire exit door to the car park closed except in emergency

I can also confirm that subject to the agreement being incorporated to the application, I would not raise a representation.

However, the resident has indicated that other people are also making representation to the application, but I don't know who they are so I cannot comment on their views about the potential amendment.

I anticipate that you will therefore not be willing to amend the application until you have also addressed concerns of other people, which is unlikely before the representation deadline. In this situation, I would be minded to make the representation to the variation application, in the hope that agreement can be reached enabling its withdrawal prior to a hearing which would then be unnecessary.

In relation to the complaints, and the future sustainability of the business as a licensed venue, I have not yet obtained any independent evidence of a problem (a call was made to out of hours officers last weekend but was cancelled after the music level reduced). The investigation will continue and the licence holder notified of significant development as appropriate. I strongly recommend the following:

- Carrying out a noise assessment and installing sound insulation to the building (my concern is mainly the roof, vents, and the fire exit)
- Ensuring that rating noise levels from the mechanical systems do not exceed the background noise levels at the site boundary (this tends to drop in the evening and night-time)
- Setting a sound limiter at a level that is appropriate for the fabric of the building to prevent music noise disturbances to local residents (ie the better the noise insulation the louder the music can be)

These are technical aspects and the input of a suitably competent specialist is advisable. The Association of Noise Consultants have membership criteria and their members list is available on the internet at:
<http://www.association-of-noise-consultants.co.uk/>.

I would be grateful if you could let me know if your client is favourable to the amendment of the licence.

If the application is not to be amended, then I would pursue my representation unless suitable conditions about sound insulation and music levels can be agreed.

Please do not hesitate to contact me if you have any questions.

Best Regards,

Mr Gerg Jambor
Environmental Protection Officer, Tuesdays to Fridays
Birmingham City Council
Tel: (0121) 303 9975

Postal Address: Environmental Health, Manor House, PO Box 16977, Birmingham, B2 2AE
Office Site: Environmental Protection, 1st Floor, 40 Moat Lane, Birmingham, B5 5BD

Gerg Jambor

From: Gerg Jambor
Sent: 24 March 2017 09:29
To: [redacted]
Cc: [redacted]
Subject: RE: application to vary premises licence: ana rocha, 48 frederick st, birmingham Ref
EGL:MA:ANA001.001

Importance: High

Dear [redacted]

I regret to inform you that I have now received a video recording from a local resident showing the premises operating during its current licence hours. The video was made on a mobile device but contains sound recording also.

In my opinion, if Officers visit and confirm that the noise on the video is representative of that arising from the premises, then a nuisance is being caused. Once confirmed with suitable evidence, this would normally warrant a review of the premises licence and or the service of an abatement notice.

I will therefore be unable to withdraw my representation to the variation application unless further conditions are agreed and included.

These include controls such as:

- Removal of the provisions of the Live Music Act.
- No licensable activity shall take place until the premises has been provided with sound insulation to the written satisfaction of Environmental Health.
- No amplified sound shall be provided at the premises until such time as a sound level limiting device has been installed and agreed in writing with Environmental Health. The specifications of the device and associated sound amplification system shall be agreed in writing by Environmental Health prior its installation.
- Windows and doors to the premises shall remain closed whilst licensable activities are taking place.

Given this situation, and the links with the planning permission and use of the premises as a gallery / bar, I have informed a Planning Officer about the premises. Unless your clients operate within the requirements of the permission (which I understand is primarily as a gallery with an ancillary bar), they may be liable to planning enforcement action. Some of the modifications already made to the building may require retrospective planning applications (which would not necessarily be granted).

I strongly advise that in order to prevent formal action from Environmental Health, the use of the premises in the meantime is controlled so as not to cause any nuisance to local occupiers.

Please do not hesitate to contact me if you have any questions.

Best Regards,

Mr Gerg Jambor
Environmental Protection Officer, Tuesdays to Fridays
Birmingham City Council
Tel: (0121) 303 9975

Postal Address: Environmental Health, Manor House, PO Box 16977, Birmingham, B2 2AE
Office Site: Environmental Protection, 1st Floor, 40 Moat Lane, Birmingham, B5 5BD

From: Gerg Jambor

Sent: Thursday, March 23, 2017 3:04 PM

To: 'Peter Adkins'

Subject: RE: application to vary premises licence: ana rocha, 48 frederick st, birmingham Ref EGL:MA:ANA001.001

Thanks

I will raise the representation, not going into a lot of detail at this stage, and hopefully the matters can be resolved next week.

Best regards,

Mr Gerg Jambor

Environmental Protection Officer, Tuesdays to Fridays

Birmingham City Council

Tel: (0121) 303 9975

From: Peter Adkins [mailto:peter.adkins@egllaw.com]

Sent: Thursday, March 23, 2017 2:50 PM

To: Gerg Jambor

Subject: RE: application to vary premises licence: ana rocha, 48 frederick st, birmingham Ref EGL:MA:ANA001.001

Dear Gerg

I called Licensing yesterday and they confirmed that there have been other resident's objections. They will not reveal the objectors to me until next week.

Whilst I am pretty confident we can agree your proposals in principal, I am awaiting a final e-mail from the owner as to these and in response to some comments from the Police. We will though need to see if we can also deal with the other objectors at the same time.

I will keep you posted.

Best wishes

EMMS•GILMORE•LIBERSON
Solicitors

Registered Office: Lancaster House | 67, Newhall Street | Birmingham | B3 1NQ
T: 0121 314 0000 | F: 0121 262 1870 | www.egl-law.com

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Gerg Jambor

From: Gerg Jambor
Sent: 31 March 2017 09:07
To:
Cc:
Subject: RE: WK/008512608 - complaint of noise from ana rocha, frederick street, birmingham

Dear Edgar,

Thank you for your emails and videos.

If Environmental Health receive a nuisance complaint then the law says we must investigate it and take action if nuisance is determined. There are no legal limits for noise nuisance as each situation is different and area has a different character.

When we investigate, we can measure noise levels, but the crucial parameter is the impact on the affected parties and whether they suffer material interference to the enjoyment of their premises (eg having to close windows, turning up tv or hi-fi, sleep disturbance etc). This is subjective and reliant on Officer opinion.

Please also note that road traffic does not come within the scope of nuisance noise as it does not arise from premises. That the noise can be louder on the road is only relevant if the road noise is dominant and constant at the residential premises so as to mask the noise from commercial premises. In this case there are residential areas screened from roads by buildings including your premises. Note also the spectra of road noise and music / people are very different, and people's perception of them therefore different.

Perpetrators of nuisance have a defence in the law of "best practicable means". However in this situation I do not believe this would apply, as there is no significant sound insulation to the premises to control the noise levels that are being generated at the premises. Furthermore, I believe the planning permission was granted on the basis that the premises would be operated mainly as a gallery with ancillary bar. It could be suggested that the layout and set-up is that the premises is operated more as a restaurant/bar with ancillary gallery.

I will be reviewing our independent recordings next week, and will let you know of the outcome, and will take appropriate legal action if necessary. Note that the recordings include also noise from the extractor fan which can also constitute nuisance.

Meanwhile, I recommend that your operation is controlled so as not to cause disturbance and would be grateful to receive any progress updates on mitigation measures you are considering.

Please do not hesitate to contact me if you have any questions.

Best Regards,

Mr Gerg Jambor
Environmental Protection Officer, Tuesdays to Fridays
Birmingham City Council
Tel: (0121) 303 9975

Postal Address: Environmental Health, Manor House, PO Box 16977, Birmingham, B2 2AE
Office Site: Environmental Protection, 1st Floor, 40 Moat Lane, Birmingham, B5 5BD

From: Vera Vera [mailto:edkannveranueda@gmail.com]
Sent: Friday, March 31, 2017 1:09 AM
To: Gerg Jambor
Cc: hello@anarodha.co.uk; pad@ins@egilaw.com
Subject: Re: WK/008512608 - complaint of noise from ana rocha, frederick street, birmingham

Dear Gerg,

I hope you well,

First thing I wish to say is that my family and me came a few years ago to UK to open a restaurant with background music and live entertainment for nice people. We never work with youngster or doughy costumers and you could check by police that never have any issues running our place. We never leave our families and friends behind to come here and get problems with anyone's. We sold all our possession to invest in the Jewellery Quarter opening our business nearly year ago. I love have a great relation with my neighbourhood and respect them is a priority to us! You could research in this way by social medias (Facebook, Twitter, YouTube, Tripadvisor, Google +,...) what we really do and how so much neighbours from Birmingham are happy with our services.

Before We Start We meet our closer neighbour that told us in that time that hate bars in the neighbourhood and object from our opening and also from other bar around like the old Vertu in that time (actual Bottom Factory) or Fredericks, both places next to us!

From our start dealing I try to make happy our neighbour regarding the noise that for suppose to be not acceptable level of noise nuisance for UK any in my opinion was totally legal and acceptable. I have many proof of that because I use to answer text in different times of the day,

When know about our intention of extend a couple of hour everyday our actual opening schedule licence start a big campaign to destroy us. An example of that is the first list of complaint from for example: how could be disturbed by the noise pollution of our extraction system in some exactly times like 23rd. Of Feb from 20:00 or Sunday 26th. Feb 18:47 if the vents run everyday from our start dealing till today? I cannot understand why focus on some exactly moment in this way!

After read your email and your opinion I have got an db measure appliance to proof that our music is determinate like a reasonably acceptable level of nuisance for United Kingdom, and noise from street is louder that in our interior.

Please see a few videos I,m going to send you where you could check our position. I will send you in a diferents emails to not overcharge the channel,

Could be great to research if Our main objection neighbour is a particular one like police told me in a routine inspection, they said that they receive many calls complaining about nuisance from object about different bars of the area,

I will record more proof for you, in the same time We have contact with different noise insulation companies to sound proof more our premises any in my opinion is not necessary.

Best wishes,

Gerg Jambor

From: Gerg Jambor
Sent: 04 April 2017 15:49
To: Edg...
Cc: ...
Subject: RE: Ana Rocha Bar & Gallery Ltd.

Dear Edg...

Thank you for your email. I have spoken with ... in the meantime and explained a brief summary of the situation.

Unfortunately, I must inform you that Officers visited a resident on Saturday (about 23:35 hours) and stayed for about half an hour. The Officers reported that a nuisance was witnessed, caused by music and people noise at your premises. This is despite the resident confirming that the noise level reduced at about 23:30.

I am scheduled to review our recordings tomorrow, and if these, as I expect, are corroborative, then I will arrange a case conference meeting with my manager to decide the appropriate course of action. This may also include matters relating to the mechanical services (extraction etc) at the premises.

I will update you after the meeting or otherwise as appropriate.

Please do not hesitate to contact me if you have any questions.

Best Regards,

Mr Gerg Jambor
Environmental Protection Officer, Tuesdays to Fridays Birmingham City Council
Tel: (0121) 303 9975

Postal Address: Environmental Health, Manor House, PO Box 16977, Birmingham, B2 2AE Office Site: Environmental Protection, 1st Floor, 40 Moat Lane, Birmingham, B5 5BD

-----Original Message-----

From: ...
Sent: Monday, April 03, 2017 3:05 PM
To: Gerg Jambor
Cc: ...
Subject: Ana Rocha Bar & Gallery Ltd.

Dear Gerg,

I hope you well,

I've been over the nuisance complaint in this days and I have a few updates:

1st: I was measuring with my db appliance inside my business and close to ... house during all the weekend and I couldn't listen nothing from us but the noise from other bars from the area could be recognize in the background, maybe nuisance come from other bars?

Gerg Jambor

From: Gerg Jambor
Sent: 06 April 2017 15:19
To: [redacted]
Cc: [redacted]
Subject: noise nuisance from ana rocha, 48 frederick st

Dear [redacted],

Further to recent communications regarding the above, I confirm that the recordings made at a resident's premises have been reviewed and a case conference has been held to consider the evidence in relation to the ongoing noise nuisance investigation.

I regret to inform you that statutory noise nuisance has been determined arising from:

1. music and crowd noise from inside the premises; and 2. noise from mechanical plant installed at the premises; affecting residential occupiers at Tenby St.

Two abatement notices will now be prepared, and likely served to your registered office tomorrow.

One will relate to the mechanical noise and the other to the noise from inside the premises, with timescales of 6 and 8 weeks respectively. Notes for your guidance if you decide to appeal will be included.

Failure to comply with the notices would constitute criminal offence.

I sincerely hope that subsequent enforcement action will not be necessary.

Please do not hesitate to contact me if you have any questions.

Best Regards,

Mr Gerg Jambor
Environmental Protection Officer, Tuesdays to Fridays Birmingham City Council
Tel: (0121) 303 9975

Postal Address: Environmental Health, Manor House, PO Box 16977, Birmingham, B2 2AE Office Site: Environmental Protection, 1st Floor, 40 Moat Lane, Birmingham, B5 5BD

Gerg Jambor

From: Gerg Jambor
Sent: 07 April 2017 08:37
To:
Cc:
Subject: RE: noise nuisance from ana rocha, 48 frederick st

Dear

Thank you for your emails. I have also received a voicemail from

As I have been trying to warn you in my correspondence, we investigate complaints of nuisance and obtain evidence to determine if this exists.

I first wrote to you on 22 February regarding the complaint, and have provided you with guidance in subsequent emails. Meanwhile, regrettably, sufficient independent evidence has been obtained to establish that a nuisance exists. The law says a notice must be served, and it is therefore now the Council's duty to do this.

In my opinion, bear in mind I have not carried out a survey, the crowd / music noise arises mainly through the roof and possibly through the extraction system. Depending on the construction and installation of the walls and doors there may also be leakage.

Further, I suggest that rather than the complainant having a campaign against you, that the resident has been very patient as can be seen by the correspondence in the representation, has tried for several months to resolve the matter without recourse to formal complaint.

The mechanical system itself causes noise which is measured at about 29 dBA inside the resident's premises with the windows closed and is dominant in the absence of music/crowd noise. I expect that could increase to over 45-50 dBA with windows open.

With music and crowd noise levels inside the resident's premises vary from about 30 to 40 dBA with occasional levels over 40 dBA (windows closed). I have not analysed the recordings for LAmax.

With regard to survey, a BS4142 method specifically excludes music sound, and analysis should be carried out in octave or 1/3 octave bands. If possible I would advise dialogue with local occupiers which may enable better measurements, but also ensures you have the opportunity to address specific concerns they may have.

Unfortunately I do not know if a licence hearing can be delayed and I advise you contact Licensing directly about that. (It is my understanding that licence application timescales are quite fixed, and that the only options to avoid a hearing would be withdrawal of the application or agreement of conditions with all parties having made representations.)

I hope this helps.

Please do not hesitate to contact me if you have any questions.

Best Regards,

Mr Gerg Jambor
Environmental Protection Officer, Tuesdays to Fridays Birmingham City Council
Tel: (0121) 303 9975

Postal Address: Environmental Health, Manor House, PO Box 16977, Birmingham, B2 2AE Office Site: Environmental Protection, 1st Floor, 40 Moat Lane, Birmingham, B5 5BD

-----Original Message-----

From: [mailto:hello@ana-rocha.co.uk] (Hello)
Sent: Thursday, April 06, 2017 3:55 PM
To: Gerg Jambor
Cc: hello@ana-rocha.co.uk; Helen Fiddis; Tim Sherlock; Sue Alder-Hillalt
Subject: Re: noise nuisance from ana rocha, 48 frederick st

Dear Gerg,

I feel shock with this new!

Could you review the letter from our closer neighbour where the grill of the vent are, I can,t understand how them not have any issue with us and far away neighbour feel noise nuisance,

Also before of any abatement notice could you wait to check what an independent Accoustics says,

My intention is do whatever is need to keep our neighbour "disturbed" happy. Maybe this independent suggest some actions to mitigate what you detect and confirm belong to our premises and everybody could continuing living or dealing without headaches,

Best Wishes,

Gerg Jambor

From: Gerg Jambor
Sent: 07 April 2017 10:55
To: [redacted]
Cc: [redacted]
Subject: RE: noise nuisance from ana rocha, 48 frederick st

Dear [redacted]

Thank you for your email.

I can confirm that I would not object to an adjournment of the hearing for the variation application.

I am not specifically preparing a report. The nuisance determination was based on the evidence gathered which consists of resident's records, about 2 ½ hours of calibrated noise recording between 23 and 28 March and Officers' opinions.

I will send scans of the correspondence being prepared to [redacted] in due course so he will see the Notices. In summary, they will require the nuisance be abated but do not specify how to achieve this. This is because there may be alternative means to abate the nuisance to any works specified, the specified works may not address the nuisance, and consequently the notice could be challenged.

If the Notices are complied with, then no enforcement action will be taken.

Please do not hesitate to contact me if you have any questions.

Best Regards,

Mr Gerg Jambor
Environmental Protection Officer, Tuesdays to Fridays
Birmingham City Council
Tel: (0121) 303 9975

Postal Address: Environmental Health, Manor House, PO Box 16977, Birmingham, B2 2AE
Office Site: Environmental Protection, 1st Floor, 40 Moat Lane, Birmingham, B5 5BD

From: [redacted]
Sent: Friday, April 07, 2017 10:37 AM
To: Gerg Jambor;
Cc: [redacted]
Subject: RE: noise nuisance from ana rocha, 48 frederick st

Dear Gerg

Thank you for your e-mail. I met with [redacted] and the [redacted] the Landlord of the Premises, earlier this morning to discuss the whole matter.

I have explained to him your actions flow automatically from your findings.

[redacted] is very anxious to re-assure you that he wishes to work with you and the objectors to try and find a mutually acceptable resolution.

It is for this reason that he has instructed [redacted] and he wishes [redacted] to work with all parties over the coming days and weeks.

I understand that [redacted] is attending at Ana Rocha later today to start work. He will be preparing a report and recommendations very shortly and we would intend to share and discuss the final version with you once it has been considered. [redacted] is happy for you to speak to [redacted] direct if you consider this would help.

Without seeing your report, and the proposed Abatement Notice, we cannot comment on that or your findings as yet, but it is clear that there are steps that you feel need to be taken to avoid a statutory nuisance. [redacted] assures me that he will pay proper regard to the Notice.

As regards the hearing, we have before sought an adjournment in similar circumstances which has been granted with all parties consent. It would seem to us to be sensible that any committee is furnished with all available evidence which, given the Easter break, may not be possible by 19th. It is our hope that, if the hearing can be adjourned, by the time the matter comes before the Committee there can be a schedule of agreed works and a timescale for those to be completed. It would also give time to discuss possible amendments to the application and conditions. It may also be necessary to have [redacted] attend at the hearing.

In these circumstances can I advise the Council that you would be prepared to agree an adjournment? Our plan is that I will see [redacted] again on Monday when we have more information from Tim and a final decision made then.

Best wishes

Peter Adkins

Director of Regulatory Services / Licensing

0121 314 0137

0121 314 3090

EMMS GILMORE LIBERSON
Solicitors

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You must not disclose or forward this firm's bank details to any third party.

REFERENCE WK/008561998
(please quote in all correspondence
relating to this notice)

BIRMINGHAM CITY COUNCIL
ENVIRONMENTAL PROTECTION ACT 1990 - SECTION 80
ABATEMENT NOTICE

TO: Ana Rocha Bar and Gallery Ltd, 2 Water Court, Water Street, Birmingham B3 1HP

TAKE NOTICE that BIRMINGHAM CITY COUNCIL (The Council) being satisfied that a statutory nuisance by virtue of Section 79(1)(g) has occurred and is likely to recur at a premises on / within *Tenby Street, Birmingham* arising from *customer activity and the playing of music at Ana Rocha Bar and Gallery, 48 Frederick Street, Birmingham B1 3HN* so as to be a *noise nuisance*.

THE said council being satisfied that such nuisance is likely to recur HEREBY PROHIBIT its recurrence *after the expiry of 8 weeks from the service of this notice*.

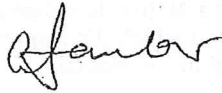
Your attention is drawn to the notes accompanying this notice

If you fail to comply with any of the requirements of this notice you may be prosecuted by the said Council within a Magistrates' Court for an offence under Section 80 of the Environmental Protection Act 1990.

You have the right of appeal against this notice to the Birmingham Magistrates Court as appropriate within a period of twenty-one days beginning with the date of service of the notice.

In the event of an appeal this notice will be suspended.

SIGNED



DATED

11 April 2017

Mr Gerg Jambor
Duly Authorised Officer
Environmental Health Department,
Regulation and Enforcement, 1 Lancaster Circus, Queensway, Birmingham B4 7DQ

All communications to be addressed to the Director of Regulation and Enforcement. Any enquiry relating to this Notice may be made from 09.00 – 16.00 hours Monday to Friday at:

Regulation and Enforcement, 1 Lancaster Circus, Queensway, Birmingham B4 7DQ
Tel: 0121 303 9975

ENVIRONMENTAL PROTECTION ACT 1990
NOISE AND STATUTORY NUISANCE ACT 1993
THE STATUTORY NUISANCE (APPEALS) REGULATIONS 1995

(1) Where a Local Authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the Authority, the Local Authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements:-

- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
- (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of these purposes, and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) The abatement notice shall be served:-

- (a) Except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;
- (b) Where the nuisance arises from any defect of a structural character, on the owner of the premises;
- (c) Where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.
- (d) Where the person responsible for the vehicle, machinery or equipment can be found, on that person
- (e) Where the person cannot be found or where the Local Authority determines, by fixing the Notice to the vehicle, machinery or equipment.
- (f) Where an Abatement Notice is served on (b) above, and the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the Notice within 1 hour of the Notice being fixed to the vehicle, machinery or equipment, a copy of the Notice shall be served on that person accordingly.
- (g) Where an Abatement Notice is served in accordance with (b) above, by virtue of a determination of a Local Authority, the Notice shall state that, if a copy of the Notice is subsequently served under (c) above, the time specified in the Notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the Notice.

(3) A person served with the notice may appeal against the notice to a Magistrates' Court within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with the requirement or prohibition imposed by the notice, he shall be guilty of an offence. A person who commits such an offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction, except in the case where a person who commits such an offence does so on industrial, trade or business premises then he shall be liable on summary conviction to a fine not exceeding £20,000.

(5) Where an abatement notice has not been complied with the Local Authority may, whether or not they take proceedings for an offence for non-compliance, abate the nuisance and do whatever may be necessary in execution of the notice. Any expenses reasonably incurred by a Local Authority in abating, or preventing the recurrence of, a statutory nuisance may be recovered by them from the person or persons by whose act or default the nuisance was caused.

(6) Where an appeal is brought against an Abatement Notice the notice will be suspended pending the outcome of the appeal, except where the nuisance to which the notice relates

- (i) is injurious to health, or
- (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
- (iii) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

In such circumstances the notice will not be suspended pending the outcome of the appeal