

## REPRESENTATION AGAINST LICENSE REVIEW OF LOUNGE 44 BY MR KINGSLEY ATUANYA

### Introduction

1. I Mr Kingsley Atuanya of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, make this representation in respect of Jollof Lounge( Lounge 44) 44 high street , Chatham. ME4 4DS Premises licence review served by the Environmental Protection Team at the Medway Council.
2. I make this representation within my own information, knowledge and belief.
3. I am a Director of Nsibidi Limited who is the Premises Licence holder of Premises Licence number 20/01818/MLPL01 ("the **Licence**") of the premises known as Jollof Lounge/Lounge 44, 44 High Street, Chatham, post code ME4 4DS ("the **Premises**").
4. I am also the Designated Premises Supervisor of the Premises and have held a Personal Licence for Three [3] years.

### Background

5. I have been a Director of Nsibidi Limited ("**Premises Licence Holder**") since June 2020 and the Designated Premises Supervisor ("DPS") of the premises since 18/06/2020
6. I applied for the Premises Licence/Transfer on the 12/07/2020 which was granted on 03/08/2020
7. The Premises is a restaurant premises which is licensed for the sale of alcohol and licensable activities such as live and recorded music, late night refreshment, performance of dance. The opening hours of the premises are Mondays to Wednesdays 11:00 until 23:00, Thursdays 11:00 until 01:00, Fridays and Saturdays 11:00 until 02:00 and Sundays 11:00 until 23:30.
8. The premises are licensable for on sales of alcohol.
9. \*On Fridays and Saturdays I regularly host recorded entertainment in the form of a DJ who plays until 11:30 and close by 12am, however we might have breached it sometimes unknowingly because of not looking at the time when we are busy and without enough staff.
10. On 14<sup>th</sup> December 2021, the Environmental Protection Team from the Medway Council served me with the "Notice". The Notice was served in respect of a nuisance being caused by amplified music and bass.
11. During August 2022, I applied to vary the Licence to increase my hours for regulated entertainment to the following:
  - a. Thursday 23:00 – 01:00 hours

b. Friday & Saturday 23:00 – 02:00 hours

c. Sunday 11:00pm – midnight

[Previous hours, Monday to Sunday 11am-11.30pm , Regulated, entertainment 11pm-11.30pm].

12. The application was granted for the hours that are currently on the Licence. I wish to point out that this application to extend my hours, including live and recorded music, was granted, whilst the Notice was still in force.

13. Amplified music is provided at the venue on most Friday and Saturday evenings, with exception of the two incidents raised by the Environmental Protection Team, we have not received any other complaints.

### **Alleged Breaches**

14. I understand from the Environmental Protection Team that there were two alleged breaches of the Notice, these dates being 27 March 2022 and 12 November 2022.

15. As stated above, I had been provided with very little information regarding these alleged incidents. My then solicitors'(John Gaunt & Partners) had requested on multiple occasions before my interview under caution, the Environmental Protection Team to confirm the following information about the incidents:

- a. Time of both witnesses breaches;
- b. Any recordings that were made;
- c. Any other complaints that were received;
- d. A description of what was witnessed on both events;
- e. The location of where the officer's were when they witnessed the breaches; and
- f. Please provide us with your complaints log for the premises.

16. Save for the Environmental Protection Officers witnessed loud music at 23:24 on 12 November 2022. I did not receive any of the information that was requested by my solicitors until I went for the interview and after. The EPA visited my premises which they told me was as out of the invitation I extended to them on my interview. They met and advised my manager on what to do to mitigate noise issues, e.g using mat under the speakers, but never raised any complaints according to her. She also explained to them that we only use the ceiling speakers ( 3 In number with 20 watts power each for in house music low music not the wall speakers which will be taken downstairs . She explained that she doesn't know to operate the noise device which they saw, but unfortunately it was easy because the keys were in the envelope and you just turn it on and the mic comes alive.

17. In this regard, I provide this representation based on the information that I have to date.

18. In respect of the alleged breach dated 27 March 2022, I understand from my solicitors that a summons in respect of this matter would be statute barred as 6 months has now lapsed.
19. In light of the absence of disclosure and to the bar on proceedings, I explained to the EPA on my interview that, I decline to answer any questions in respect of this alleged event.

### **Nuisance on the 12 November 2022**

20. On my interview on 20<sup>th</sup> December 2022, In the absence of the above information, I disputed that a nuisance has occurred on the 12 November 2022 and I put the Environmental Protection Team to proof on the existence of a nuisance being caused by my Premises and that the terms of the Notice have been breached, since they could not provide information my solicitors asked and we still did not receive those information.

### **Management of the Premises**

21. I am the DPS of the Premises and manage the operations of the Premises, when I am on site. When I am not on site, my Manager Ms.Nadiya Fadeyi oversees the operation of the Premises. This was the situation on the 12 November 2022.

### **Noise Management**

22. We have a Noise Management Plan ("the **Plan**") in place for the Premises. The Plan has been prepared by expert acoustic experts, DAA Group, and forms part of the Noise Impact Assessment which was also prepared by DAA Group.
23. As policy we do not allow any re-admission to the premises 30 minutes before closing.
24. We provide a contact number for local residents to contact the premises should there be any issues with the noise and encourage residents to contact us with any noise issues, so that we can take immediate action. In respect of the entire noise nuisance that the premises have been alleged to have breached we did not received even a call from any resident(s) to this effect.
25. On the Log management book, we have an up to date log book, which I showed PC Ian that visited us on 10<sup>th</sup> March and it's unfortunate that on the date the EPA team came we were only advised initially to record incidents, but did not record noise levels which was what we were doing before.

### **Noise Limiter.**

26. On my interview I told the EPA, that "As part of the Plan, a sound limiter has been purchased and will be installed to monitor the sound from any amplified music

devices, it has been installed and will be set to Frequency analysis between 125Hz – 40Hz from this weekend of my interview. It was installed as said, however when they visited my manager couldn't now show them how it worked, if I was there I would have turned it on because it was connected to the socket just underneath and the microphones up. And I have sent all information requested by the Planning Authority Amada Barnes and Mr, Edwards since it was installed. However each time I was made to send either a new piece of information that required me to book a consultant to come out again and unfortunately these skill labors scares, expenses and take their time to come, hence the delay.

27. However it was a practice of the premises to proactively manage noise levels by monitoring the levels by using noise decibel app on a mobile phone as various noise sensitive points around the premises. I mentioned this on my interview with the EPA.
28. We, save for access and egress of the premises, keep the doors and windows closed when amplified music is being played.
29. In terms of monitoring the music, when amplified music is played which is usually Fridays and Saturdays, we monitor the noise at various noise sensitive points of the premises. Our garden is closed by 10pm except for our staffs that does the cleaning and bbq and also have to take their breaks in the garden because there is nowhere where to have fresh air or for them to smoke and relax.
30. My staff also undertakes training in respect of noise management and are familiar with the contents of the Plan.
31. All the above measures are implemented when we have provided amplified music.
32. 2 Doormen are constantly employed on Friday and Saturday as my license condition states which was witnessed by PC Ian on the 10<sup>th</sup> March 23 even though on these weekends I have less than 10 patrons inside and have to use my own money to pay these staffs which have kept me in debt since I opened this restaurant.

### **30<sup>th</sup> May 2022 to September 2022**

From March 20, 2022 to 31<sup>st</sup> September 2022, I never had a Dj or played loud music in my premises and I explained this to the EPA at my interview and also I have cctv evidence of this. I told the EPA that if there was ever any noise recording it wasn't from my premises and I had cctv to prove this. I also received an anonymous letter which was posted to my restaurant ( with the note " they are out to get you, be careful") This is a photo copy of a letter( see attachment) sent actually sent to Ms Gavriil, of xxxxxxxxxxxxxxxxxxxx. from Medway Council customer Relations Team, REF NO:COR008709ON Date:29

September 2022. It's states, that from March 29<sup>th</sup> 2022 to date (29<sup>th</sup> September 2022 When the letter was written,) there had never been any noise breach by Lounge 44, but on the review application by Fiona Wilson, she listed that calls and recordings of noise nuisance were made on the "residents" noise app by this neighbor from May 2022 all through to August 2022. So who was making up this Noise purported to be from my Premises?

## **22 November 2022.**

The security company that supplies me with Door staff called me late that the door staffs sent to me couldn't make it and I immediately asked my staff not to allow anybody in and we had only about 8 people in and we allowed them to finish their meal and closed early which I explained to the licensing authority when I sent the cctv to them. I also explained to the Licensing Authority that I was given the most strict premises license condition and I feel it's detrimental to my business as compared with others restaurants my size, for example, it's the security industry guideline that 1 doorman is for 25 people, however I must have 2 doormen even if I have less than 10 people which is a daily occurrence at my premises. I end up using my profit and day revenue to pay just staffs, but still I have always upheld my licensing condition since 2020 I opened, there have never been any fight or any incident involving the police or ambulance been called to my premises.

The EPA kept mentioning "Residents" in all its correspondents whereas they know that it's only 1 (One) Man and his wife that are the people that had always and constantly been the "Residents" that have issues with Lounge 44 and I acknowledged their plight, but accuracy is important in this matter that a family's source of livelihood depends on the outcome. At my interview with Fiona Wilson and her colleague, I made it clear that all I wanted was a peaceful resolution between me and this "residents" and I explained to her that all the residents I know, 2 flats above me XX and XX, XX, XX, XX, XX, XX, XX, Jade Chinese Restaurants, XX of Dylan Cafe and many more have never complained to me or EPA that they are disturbed by noise from my premises. My customers and neighbors have sent over 20 representations in solidarity with us and against this Review by EPA because we are a responsible business.

The EPA mentioned that another reason for this application review is because I keep causing Local "residents" noise nuisance and in warmer weather it will be worst, but I look over at Poco Loco with more patrons that was recently given planning permission to convert 2 public car parking spaces to a Permanent drinking gazebo right in front of its premises, but my customers who are predominantly Africans and Black, cannot smoke in front or at my garden of my premises without someone harassing them or taking pictures or videos of them which is another reason why me and my customers do have our reservations on the motive of this Neighbor who can see clearly that 5 doors from me is a massive live

venue that sometimes you can actually hear the noise from there if you are right outside my premises door. Most of my neighbors I talk to always tell me this, that anyone living on this high street should expect certain level of noise in their life's because it's not a neighborhood, it's the High street and they understand it and would never complain about it.

Anyone that is running a hospitality industry knows how difficult it is and also how important opening late at night is and taking away those hours will hurt my business and definitely make me close my business. As a council, I would have thought that the proactive way to solve issues like this is first, though mediation, call both parties together and find a common ground.

I have done almost everything within my ability to get what is required of my premises done at great expense and debt and also to the detriment of my mental health, to make sure its complaints with the EPA conditions give to me when I applied to extend my Planning permission and Premises license to 2am. I explained that some of the delays I experienced in doing some work were based on the availability of builders, consultants and these are beyond my control, but I still got it done. The EPA went on to say "I have demonstrated that I have done nothing wrong" and it's all about Jealous and malicious "neighbors". In actually fact in most of my communication, I have cooperated with all authority, assertively and made it clear where I felt this isn't right, I seek explanation, but who wouldn't feel aggrieved and prejudicial, when

1, The same neighbor that's claims my premises is a nuisance to him puts up a cctv overlooking my garden, recording my patrons which includes children, invading my privacy which is illegal and against they law which I reported to the police, Licensing Authority, EPA Planning authority, but nothing was done. Even when it had been judged recently. (A judge has ruled that security cameras and a Ring doorbell installed in a house in Oxfordshire "unjustifiably invaded" the privacy of a neighbour. XX claimed that the devices installed on the house of neighbor XX broke data laws and contributed to harassment. <https://www.bbc.co.uk/news/technology-58911296>)

2. Same neighbor taking his noise app and installing it in the basement of his house where he does not dwell or sleep and recoding the noise and sending it to EPA every weekend night just to get the loudest of sound to make his case that this was recorded in his sleeping area whereas the neighbors that live right adjacent to him and above my restaurant have no issues and I tried to explain this to EPA why I'm confused at the noise nuisance going on with this neighbor and not that I take no responsibility. I'm just baffled that same people living in same area, same building height, 2 families living directly under

me have no issues with noise from my premises, but another living adjacent have issues with noise from my premises.

3. Same neighbor racially abused my customers on numerous occasions that had been reported to the police and nothing happened.

4. Same neighbor racially abused and harassed my manager and her friend, took pictures and video of her that she now has to make sure she has some men are around her whenever she closes late, This, like others were reported to the police and still nothing happened?

5. Having my front Window racially vandalized twice, with eggs and the next AIDS was written on it with red paint, and still reported all these to the police, council and still nothing happened.

In conclusion, I will somehow agree with the EPA that even if the review is upheld it will not stop Mr. XX, his wife from complaining (who as of date are the only "residents") I know that have written to the EPA about this noise nuisance. This is the same man that had called the EPA/planning authority on July 2022 by 21.32hrs to complain about my premises. (See attached letter) when,

1. I wasn't playing any music

2. Even though I do not require license to play live music or recorded my until 11pm.

And it was confirmed to him that I have not breached any noise issues since March 2022 to September 29<sup>th</sup> when the letter was written, and still this did send any sort of indication to the EPA that there is something else going on here and maybe we should have a mediation between this two parities rather than seek to use a sledge hammer to solve this issue.

It is somehow frustrating, depressing and stressful to conduct business in this sort of environment which has made me to develop mental health illness as a result of the anxiety, stress and worries of what next will happen and also all the debt I'm into while trying to make a living. I explained this to the EPA in my interview that I'd been referred to counseling by my GP since 2022 and was advised to remove myself from what makes my illness worst which is the reason why I'm not always at the restaurant and work temporary there, but this was omitted by the EPA either by omission or commission, in their report.

This is a family business and I have no other source of income, I opened this restaurant on the high street because I believe that this is a designated area for businesses. I have not paid myself a wage since I opened this business and I am truly tired of this stress with the council, "residents" because it's also stressing me and my family and just wish a peaceful resolution to all these if it can be reached so my neighbors can enjoy their home while I have peace in my life and trade in peace.

I give express permission for my details and representation to be shared to all parties involved including the EPA and I will be attending the hearing.

### **Statement of Truth**

I believe that the facts stated in this representation are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed Kingsley Atuanya

Date 21/02/2023



Reference: COR008709  
Date: 29 September 2022



Ms Gavril  
[Redacted]

Customer Relations Team  
Business Support Directorate  
Gun Wharf  
Dock Road  
Chatham  
Kent ME4 4TR  
Telephone: 01634 331794  
[www.medway.gov.uk](http://www.medway.gov.uk)

Dear Ms Gavril

**Re: Stage one complaint amended response**

**We would like to apologise unfortunately the response you received on the 27 September 2022, did not contain the full response please see your amended response below:**

Thank you for your contact explaining that you're unhappy with the service you've received from Medway Council. We're sorry that you've had cause to contact us. We've investigated your concerns under our complaints procedure and our findings are below.

You reported disturbance caused by the bar/restaurant, The Lounge, operating at 44 High Street, Chatham to the Council's Environmental Protection Officers in May 2021 and I understand their investigation has been ongoing.

From a planning point of view, you received a neighbour consultation letter from the Planning Service in April 2022 notifying you that planning application MC/22/0923 had been submitted by the owners of the Lounge applying for a variation of condition 2 (hours of opening) of prior approval application MC/20/1644. This application was to extend the hours of business from 23:00 hours until 01.00 Thursday, 00.00 hours until 02.00 Friday and Saturday and Sunday from 21:00 hours until 00.00 (midnight).

You submitted comments to the Council objecting to this application on the basis the additional disruption the extended hours of operation would cause to the local area.

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This information is available in other formats and languages from Customer Relations on 01634 332456.

Due to the number of objections received the application was determined by Members of the Planning Committee. You do not feel that the comments you submitted were taken into consideration when the decision was made to approve the application with conditions.

Please be assured that your comments were taken into consideration when the planning officer made the recommendation to approve the application, which is why conditions have been attached to the planning permission granting a temporary extension to the operating hours for one year to help assess the effect of the extended opening hours on the amenities of the surrounding area and to help regulate and control the permitted development in the interests of safeguarding neighbouring amenity.

A copy of the report presented to the Planning Committee can be viewed on the Council's website at

<https://democracy.medway.gov.uk/ieListDocuments.aspx?Mid=5339>.

Environmental Protection have an ongoing noise complaint concerning loud music and patron noise from the premises. A Noise Abatement Notice was served on 14 December 2021 for amplified music and bass. Please note that this notice was not for patron noise in the garden as this has not yet been witnessed as a Statutory Nuisance. A breach of the Abatement Notice was substantiated by officers on Saturday 26 March 2022 and a warning letter was sent to the premises owner and designated premises supervisor on Tuesday 29 March 2022, to date there have been no further breaches.

*In order to gather evidence to pursue your noise case further, you must use the callout services that are available to you. Officers are yet to witness the patron noise and your case officer has advised you that the Noise App is not sufficient alone to take further action. Your last call to the out of hours helpline was on Wednesday 06 July 2022 at 21.32hrs. Should you wish to discuss your noise case further please contact your case officer.*

If you feel your concerns have not been addressed, you can ask for your complaint to be reviewed under stage two of the council's complaints procedure. To do so, please contact the Customer Relations Team in writing to Gun Wharf, Dock Road, Chatham, Kent ME4 4TR or by email to: [stage2complaints@medway.gov.uk](mailto:stage2complaints@medway.gov.uk). Please include your complaint reference number, outline the reasons you remain unhappy and provide any supporting information that you may have.

All feedback from our customers is valued and used to help us improve our services and the way we work for people in Medway. Thank you, once again, for taking the time to contact us.

Yours sincerely  
**Customer Relations Team**