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INAUDIBILITY - AN ESTABLISHED CRITERION

A W M Somerville

Department of Environmental Health, Edinburgh District Council, 15 Johnston Terrace, Edinburgh EH1 2PT

1. INTRODUCTION

Inaudibility is used as a criterion (a) to prevent or minimise a loss of amenity arising from certain new developments, and (b) to deal with situations where it is considered a nuisance to have to listen to another persons music^[1]. As it is now some time since its introduction, it is considered a worthwhile exercise to review the situation with the benefit of hindsight. This paper briefly recounts the steps leading to the adoption of this criterion; reviews the circumstances under which it has been used; and quantifies the extent of it's use in Edinburgh and Scotland. It is concluded that the use of inaudibility as a criterion is justified, practical, and now well established.

2. THE ADOPTION OF INAUDIBILITY AS A CRITERION

In July 1977, the Licensing (Scotland) Act 1976^[2] gave rise to more liberal licensing hours when the normal closing time of 10pm was changed to 11pm, and licensees were allowed to apply for regular or occasional extensions to these hours.

Public houses were refurbished and began to compete to attract the young drinker by installing juke boxes and powerful in-house hi-fi sound systems, and hiring discotheque and live music performers. More recently, we also have the Karaoke to contend with. The vast majority of these events were taking place in premises never intended for such purposes.

In dealing with complaints from neighbouring residents, the criterion being applied at that time was the Wilson Report's L_{10} of 35dB(A)^[3]. It was found that only 40% of the complainants expressed satisfaction with the final outcome^[4]. A typical response following the setting of the sound level would be "You mean I'm supposed to find that acceptable? ... I don't think I should have to listen to their music in my house at this time of night." Stirling and Craik found that only 20% of the subjects in their survey rated intrusive music as acceptable, even although it was played at 5dB below background^[4].

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At that time it was normal practice in Edinburgh to try and prevent amplified music problems by attaching a planning condition to new developments which were a potential source of complaints. This condition required the level of music to be controlled so as to be no more than 35dB(A) in any neighbouring residence. In 1980, taking on board the feelings of neighbouring residents and the officers dealing with their complaints, the condition was amended to require inaudibility. The use of inaudibility as a criterion had begun. This, however, did not deal with the problems from existing premises.

In 1984, the Secretary of State for Scotland confirmed Byelaws^[5] under the Licensing (Scotland) Act, which made it possible for the Licensing Board to prohibit the playing of music systems without their written approval, and to attach appropriate conditions. This approval could be withdrawn if the permitted activities subsequently caused annoyance or inconvenience, or if any of the conditions attached by the Board were breached. The provisions of the Byelaws are only rarely used, as and when necessary. They are not the main means by which inaudibility is enforced in Edinburgh.

The Licensing (Scotland) Act, with the full authority of Parliament, gives a Licensing Board the right to attach such conditions as it thinks fit to any extensions granted beyond the permitted hours. A standard condition is therefore attached to all regular extensions, requiring inaudibility in any neighbouring noise-sensitive premises to the satisfaction of the Director of Environmental Health. In addition to this, other conditions may be attached as necessary, eg;

No sound system shall be operated on the premises other than one which has been set and governed to the satisfaction of the Director of Environmental Health.

No alteration or modification to any existing sound system shall be effected without prior notification to the Director of Environmental Health.

There shall be no live music performance on the premises.

Licensees now accept that if they wish to open and do business at times when their neighbours would expect to be able to go to sleep, the standard condition will be attached to ensure that neighbours do not have to listen to their music.

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3. CIRCUMSTANCES IN WHICH INAUDIBILITY IS USED

3.1 Planning

To prevent a loss of amenity from new development, either or both of the following conditions may be attached.

Any music and vocals shall be so controlled as to be inaudible within the nearest noise-sensitive premises.

The sound insulation properties, and sound transmission characteristics of the structures and finishes shall be such that no noise from the normal operations on the premises is audible in any neighbouring living apartment.

The first condition would be attached to new public houses, clubs, discotheques, restaurants, amusement arcades, etc. The second condition is less common but is used in situations where the introduction of a new commercial activity is proposed in the vicinity of residential premises, at noise-sensitive times. For example, a hot food take-away or restaurant kitchen immediately under a flat. In order to comply with the condition it may be necessary, eg to undertake sound insulation works to the ceiling and kitchen window. Complaints relating to the banging of pots and pans, dishwashing, radios and kitchen staff voices, are thereby avoided.

3.2 Licensing

Any public house, club, hotel, discotheque, restaurant, cafe, etc which has a regular extension to the hours of its liquor licence, has the inaudibility condition attached automatically. In addition to this, licenses which are required under the Civic Government (Scotland) Act^[6], Theatres Act^[7], Cinemas Act^[8] and Lotteries & Amusement Act^[9], allow for such controls via similar licensing procedures should they be necessary.

3.3 Nuisance

There have been occasions when it was necessary to serve a notice under the Control of Pollution Act^[10], to deal with serious nuisances from loud music. It has been made clear that the nuisance would only be considered abated when the music was controlled to the extent that it was inaudible in the complainant's house. The most recent such case (October 1990) that I was involved in, resulted in the operators of a discotheque/live band venue receiving a £3000 fine for contravening a Section 58 Notice and breaching a licensing condition. An interdict (injunction) was also granted against their music being heard in the neighbouring houses in the future.

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3.4 Exclusions

The criterion of inaudibility is not used for occasional licence extensions or short term irregular events such as festivals, funfairs, and outdoor pop concerts.

4. THE EXTENT OF IT'S USE IN EDINBURGH & SCOTLAND

4.1 Introduction

It is not possible to state exactly how often inaudibility has been applied as a criterion since its introduction as a planning condition in 1980. The extent to which it is now in use, however, can be seen in the figures which show the current numbers and types of premises in Edinburgh covered by an inaudibility condition. The number of complaints in Edinburgh which have been successfully dealt with by meeting the inaudibility criterion, and the number of other Local Authorities making use of it, are also useful indicators as to how well established the criterion has become.

4.2 Licensing

In Edinburgh there are approximately 1,120 relevant licensed premises (ignoring eg 700 offsale premises) made up of the use categories given in Table 1. In total 901 of these premises (over 80%) have regular extensions and therefore an inaudibility condition attached to their licence.

Table 1. *Type of premises and % with regular extensions, and therefore inaudibility condition (1990-91)*

Licence	Number	% with Ext
Entertainment (disco)	17	100
Public House	515	96
Club	207	86
Hotel	152	78
Restaurant	230	41
In Total	1121	80

Edinburgh had 142 entertainment noise complaints in 1990, 126 (89%) of which related to problems from 95 licensed premises with inaudibility conditions attached. The other 11% related to; several activities for which inaudibility was not an appropriate criterion

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(eg outdoor five-a-side football, a funfair, etc), and two which were covered by a planning inaudibility condition. The entertainment complaints represented about 23% of all noise complaints for that year. By far the biggest group of offenders were the public houses which were responsible for over 71% of complaints from licensed premises. Next were the hotels, clubs, and discotheques, with 12%, 8% and 4% respectively.

When it has been verified that music from a particular licensed premises is a problem, the licensee is contacted and arrangements made to have the level of any sound system on the premises set and governed to an appropriate level. The majority of the complaints in 1990 were dealt with informally in this way, with relatively few (12) requiring adverse reports to the Licensing Board. Following such a report, the Board may reduce the opening hours; grant the licence for what is in effect a short probationary period; or, for repeated offenders, attach a 'no music on the premises' condition. This condition has only been used twice since 1985. Table 2 below shows the high % of licensed premises which do business without complaint in a city which operates a policy of inaudibility.

Table 2. Problem licensed premises and % premises operating without complaint (1990)

Licence	Number	Problem Premises	% without complaint
Entertainment (disco)	17	4	76.5
Public House	515	67	87.0
Club	207	9	95.7
Hotel	152	10	93.4
Restaurant	230	5	97.8
In Total	1121	95	91.5

By way of a summary for 1990 in Edinburgh: even for the most frequent offenders, public houses, 87% of premises managed to operate without complaint; 91.5% of all relevant licensed premises operated without complaint; and 99% without an adverse report to the Licensing Board.

4.3 Planning

Since 1980, any change of use to, or new development of, a public house; hotel, club; discotheque; restaurant; function rooms; cinema; theatre; amusement arcade; betting shop;

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sound studio; health club/gymnasium ... etc, would be subject to an inaudibility condition if it was in a location where there was a possibility that music and vocals would be heard within neighbouring noise-sensitive properties. Unfortunately, statistics for the number and category of use, of conditional consents granted since 1980, were not readily available. Suffice to say that a significant number of these types of premises have consent which is conditional on inaudibility.

It is also worthy of noting, that in addition to the inaudibility conditions which are attached as a matter of routine, over the years 1983-91, the Scottish Office Reporters have imposed conditions requiring inaudibility in the course of determining some 14 planning appeals.

4.4 Other Authorities in Scotland

In the returns for the 1990 REHIS Annual Report, a question was included which asked every local authority in Scotland whether they used inaudibility as a criterion. Replies have been received from 48 of the 56 authorities, with 25 stating that they did use it as a criterion and 1 indicating that they intended to do so in the future.

In terms of the populations represented by the returns, 56% ie 2,704,645 people are in authorities which use inaudibility as a criterion. Even if none of the authorities which have yet to reply use inaudibility, the figure 2.7 million is about 50% of the population in Scotland.

5. CONCLUSIONS

Inaudibility as a criterion is justified as it, more than any other criterion, has been found to represent an average reasonable person's response to intrusive noise within the context of the stated circumstances. The fact that hundreds of people in Edinburgh can now be at home in the evening, and in their beds at night, without having to listen to the music from a late night bar, is justification enough.

Perhaps one day measurement instrumentation, parameters, and criterion will be developed to make it possible to measure the point at which intrusive music is audible but remains subjectively acceptable. Until that day comes, it is submitted that inaudibility is the practical alternative. It is also submitted that, if there is a difference between 'inaudible' and 'audible but acceptable' this will be extremely small.

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Inaudibility has been used as a criterion for over a decade now; breaches have been prosecuted under the Control of Pollution Act and the Licensing (Scotland) Act; Court interdicts have required it; planning conditions requiring it have been set by Public Inquiry Reporters; and at least 50% of the population in Scotland live in areas where it is endorsed. Inaudibility is now well established.

6. REFERENCES

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- [2] LICENSING (SCOTLAND) ACT 1976, HMSO, London (1976)
- [3] WILSON COMMITTEE, '*Noise, Final Report*', Office of the Lord President of the Council, HMSO, London (1963)
- [4] J R STIRLING & R J M CRAIK, '*Amplified Music as a Noise Nuisance*', Proc.IOA Vol 8 Part 4 (1986)
- [5] CITY OF EDINBURGH DISTRICT LICENSING BOARD, '*Byelaws for Licensed Premises*', SHHD St Andrews House, Edinburgh (1984)
- [6] CIVIC GOVERNMENT (SCOTLAND) ACT 1982, HMSO, London (1982)
- [7] THEATRES ACT 1968, HMSO, London (1968)
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- [10] CONTROL OF POLLUTION ACT 1974, HMSO, London (1974)

