

**Bundle for the hearing on February 5th, 2016
regarding SPIN night club**

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All the references to the evidence are highlighted with **green, evidence itself is located in the appropriate section starting from page 7.*

Introduction

To whom it may concern:

We (Alex Pershin & Yulia Syrovoiskaia) would like to present some background information in order to support our application *proposing to reduce the operational hours of Spin Night Club*.

We bought and moved into 11 Elms Road on the 5th December 2014, an apartment next to Elms Field and Alexandra Court. It would be fair to mention that before we bought the property, we had several viewings (and a late viewing - after 11pm on Saturday), as we were concerned about the location of the Club. We also knew that the operational hours of the Club had been increased back in 2010 but as there had been no complaints from local residents regarding this change, we decided to proceed with the purchase.

While we were very pleased to be living so closely to the green space, the railway station, and the town center amenities, we hadn't counted on having the whole atmosphere from the Club within our flat at weekends on a regular basis. Since moving in, our flat has have been flooded with vibrations due to the heavy bass emanating from the Club, along with the associated noise from drunk revellers. The Club operates every weekend until 03:30 (it is the only establishment that sells alcohol after 01:30 in Wokingham town centre), while its food shack operates until 03:20. This results in us having little chance to get to sleep before 04:00, when all the club patrons, food shank attendees, taxis, cars, etc. finally leave Alexandra Court.

Our points

Nuisance from the amplified music

The problem was originally reported to the Environmental Health on December 13th, 2014. Prior to the end of the *extension of the abatement notice* (which expired on April 29th, 2015) the issue was practically resolved in April (1.1), however gradually noise levels went up again, and so we have been systematically disturbed:

- **May 11, 2015** - We reported that loud bass is still present and specified the times when the loud tracks were heard (1.2)
- **May 22-25, 2015** – A recording device was installed for the long bank holiday weekend and the EHO's report confirms that a bass issue is present (1.3)
- **August 16, 2015** - After visiting our flat at around 01:00 Joe Dray (Principal Officer, Environmental Quality Team) and Michael Heslehurst (EHO) concluded that after standing outside the club they could hear loud music coming from the bar (Gig house) opposite the club, which more than likely contributes to the problem. However, when the pub was closed (at 01:30), we were still disturbed by the bass, so I raised my concerns as to whether it was Gig house that was contributing to it, and again reiterated that bass noise is coming from the club. This has been confirmed by Joe (1.4)
- **September 1, 2015** - Loud music was reported (1.5)

- **October 1st, 2015** – An internal door to the smoking area was fitted at the club, but the problem persists - loud bass was again reported (1.6). I have also recorded evidence showing bottles being refused outside the permitted hours.

An EHO visited our property again on October 11th, 2015 and expressed his professional opinion that statutory nuisance has been abated, however the problem was not resolved:

- **November 1, 2015** - We have provided additional evidence and escalated this issue to the local councilor (1.7) Julian Sumner

Julian organised a meeting attended by himself, Joe Dray, Anna Smy and myself during which we have discussed the following:

1. Even though the case was closed, Environmental Health will continue working on it as we were still experiencing nuisance.
2. We raised concerns regarding an *unsuitable condition* referenced in the license which has been changed afterwards:

Annex 2, d) Prevention of Public Nuisance - *"Amplified noise or other noise emanating from within the premises shall not at any time exceed the background noise level minus 5dB when measured at 1 metre from the facade of the nearest noise sensitive premises"*

3. We raised concerns regarding the fact that the owner has the power to modify limiters at any time; this has been done in the past (August 2015) and admitted by Murat Samut as stated in EHO report (p. 21).

By the end of the meeting Anna Smy had suggested that Environmental Health would identify permitted levels that are not causing nuisance and send EHO to check that limiters are configured accordingly, which I found to be a satisfactory outcome of the meeting.

- **December 29, 2016** - We reported the bass issue again (1.8) and recorded evidence on Dec 27th (1.9)

We have also requested an update on the actions discussed during the meeting, Joe Dray confirmed:

- **January 4, 2016** - *"The responsibility for complying with the licence conditions lies with the owner/licence holder and we cannot restrict his access to the noise limiting device. We would expect the licence holder to take 'ownership' of the noise limiter and to use it effectively to control the noise generated."* (1.10)
- **December 28, 2015** - *"no monitoring was done and no further visits have been made"* (1.11)

To summarise, it comes down to a simple fact that music levels are inadequately contained by the insulation (sound-proofing measures) being used, and permitted noise levels (that are proven not to cause disturbance to local residents) have not yet been established. Environmental Health cannot enforce settings on the noise limiting device (even though according to the law EHO has additional powers during night time such as prosecution, and removal of the equipment that creates the noise nuisance, etc.), therefore reducing music levels has a temporary effect and cannot be considered a permanent solution. Since the abatement notice expiry (April 29th) I strongly believe that the club's

management had enough time to improve the sound proofing to ensure that we are not disturbed by the amplified music (specifically bass).

Public Nuisance

Since the introduction of the Licensing Act (2003), with its *liberal* approach to promoting the night time economy, significant revisions have been made to focus more on local residents. Following the decision in 2010 to extend the club's operational hours, we believe it is crucial to now review the current conditions of the license in regards to *public nuisance* in accordance with the current licensing landscape:

- Due to the club's extended operations, drunk and loud patrons staying in the area and directly next to the residential flats (on the corner of Virgin Health club) where they wait for taxi drivers to pick them up. This is shown in the pictures from September 6th, 2015 (2.1, 2.2 and 2.3) and September 19th, 2015 (2.4 and 2.5). Needless to say that running engines and opening/closing taxi doors are contributing to the issue.
- According to Licensing Act 2003 (revised guidance, March 2015) page 14, point 3.15 "*the key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and public nuisance*", however selling food after the club has closed significantly contributes to the public nuisance, as patrons are staying in the area for a longer period of time rather than leaving peacefully: refer to videos from December 25th, 2015 (2.6) and January 23rd, 2016 (2.7)

In addition to that, we would like to limit the impact of having two late night venues in one location based on Government's Alcohol strategy "3.7 We therefore believe local communities should be able to limit the density of premises where this is contributing to the major types of harm. Cumulative Impact Policies (CIPs) can do this to tackle certain issues, but we want to go further and will amend the statutory guidance on the Licensing Act 2003 to make clear that CIPs apply to both the on-trade and the off-trade and that licensing authorities can reflect the needs of their local area by using measures such as fixed closing times, staggered closing times and zoning where they consider them to be appropriate." which should reduce anti-social behavior and crime rate even further.

Additionally, Noise Policy Statement for England (2010) suggests to "Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development" (Please see Appendix 4)

The Legislative Basis

We appreciate the fact that it was our decision to live in the town centre, and having a nightclub nearby we expected some impact – however, the question is what degree is acceptable?

We believe that the current license issued to the Club does not regulate that impact, which contradicts the main licensing objective – **prevention of public nuisance** – thus, we are asking to introduce variations to the license that would allow us to improve the quality of our life significantly.

According to the Licensing Act (2003), one of key purposes of the legislation is "*protecting the public and local residents from crime, anti-social behaviour and noise nuisance by irresponsible licensed premises*" (Please refer to the Appendix 1).

We have official evidence that we have been *statutory noise nuisance* victims since February 2015, which has affected our health and quality of life significantly. We would like to point out that the noise nuisance is occurring systematically during the night time (twice a week), as well as on bank holidays. The continuous noise nuisance has resulted in multiple headaches, and high levels of stress for the past year.

We feel our experience is contrary to the objectives of Wokingham Borough Council's *Health and Well-Being strategy 2014-2017* in "promoting good health throughout life" and "building Health and Wellbeing into new Communities" (Please refer to the Appendix 2)

Needless to say, that besides health/well being issues there has been no peaceful enjoyment of our property during the past year on Friday/Saturday nights, which is a breach of basic human rights. According to the Human Rights Act 1998 (HRA), the rights to private and family life and peaceful enjoyment of possessions are relevant to noise nuisance. Article 8 of the European Convention on Human Rights (ECHR) provides that everyone has the right to respect for his/her private and family life:

"Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Also, Article 1 of the First Protocol of the ECHR covers the protection of property and the peaceful enjoyment of possessions (Please refer to the Appendix 3):

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Conclusion

We recognize the important role of local independent businesses for the town centre economy, and we are not asking the Licensing Committee to revoke the license from the Club – what we are asking is for a reasonable compromise to reduce the operational hours of the premises in order to reduce the impact of Public Nuisance and improve the quality of life for local residents.

We believe it is a fair expectation that your Council would protect local residents when their health and wellbeing is affected. Also, this expectation is based on the positive image of Wokingham which is recognized as one of "the best places to live for young families in Britain". We are positive that any other people considering Wokingham are also expecting a peaceful and safe place to live, rather than a "thriving night time economy" that would be more appropriate to a large student town. After all, good quality of life is a cornerstone of Wokingham Borough Council's vision according to its website - unfortunately good quality of life cannot be achieved if local residents are negatively affected by the operations of local businesses.

Evidence

1.2 (Email from Michael)

From: MHeslehurst@westberks.gov.uk
To: alexpershin@live.co.uk
Subject: RE: The Spin Bar
Date: Thu, 30 Apr 2015 09:51:38 +0000

Hi Alex

I had a meeting with the owner of the club on site yesterday and I would like to feedback my findings and what they have done to abate the nuisance.

Following instructing an acoustic consultant to help them, they followed their recommendations and reduced the dB level on the dance floor from between 103-105 dB to a maximum of 93 dB which is controlled by way of a limiter attached to the DJ equipment.

They also installed new sound insulated fire doors, a new sound isolated entrance corridor, an extra set of sound insulated internal double doors and sound insulated the wall facing out to the Gig House. All this work has cost them over £7000.

They put the music on at its top level (93 dB) and played two songs one of which has a very heavy bass. I stood directly outside the club I could hardly hear it and had to concentrate/ listen very hard to hear anything which is amazing considering how loud I found it previously. I then walked to the corner of Virgin Active and could hear no music at all and considering the background noise at the time would be lower than when I have been late at night due to no people standing outside the Gig House smoking etc... is impressive.

I am therefore surprised that you have not noticed a reduction in the noise level and look forward to visiting you around midnight tomorrow to witness it for myself.

I hope you found this information helpful.

Regards

Michael Heslehurst
Environmental Health Officer

1.2 (Email complaint regarding the music)

From: Alex Pershin [<mailto:alexpershin@live.co.uk>]

Sent: 11 May 2015 09:17

To: Michael Heslehurst

Subject: RE: The Spin Bar

Hi Michael,

Hope you are doing well.

Just wanted to share our feedback after 2 weekends - we have noticed that the situation has dramatically improved - all these changes are extremely appreciated. However we can still hear some music (even if it is not that loud anymore) when they open the doors to let people in. Also my wife woke up last Friday at 00:30 as they were playing a very loud track and again at 00:53 when another track was loud.

Needless to say that we really appreciate your help and what the club has done so far is truly impressive, but please share our feedback with the club management, so the issue can be completely resolved. Please let me know if you want to gather more evidence and install recording device prior to getting back to them.

Regards,
Alex

1.3 (Environmental Health report)

Trojan was installed into the main bedroom of 11 Elms Road on Friday 22nd May 2015 by Alex Langtree.

It was collected by Michael Heslehurst on Tuesday 26th May 2015. During the time it was installed it was activated on 12 occasions between 22:25 of Sunday 24th May and 03:00 of Monday 25th May 2015.

On each occasion that the Trojan was activated its duration varied depending if the complainants turned it off or allowed it to run for the full recording duration i.e. 5 minutes. The details that follow are only the key events noted by Michael Heslehurst on listening to each session of activation.

Recordings

1. 24 May 2015 – 22:25 – very low level noise heard in background
2. 25 May 2015 – 01:49 to 01:51 – low bass heard
3. 25 May 2015 - 01:54 – tune + bass heard from music
4. 25 May 2015 – 02:04 & 02:06 – apart from distinct noise of complainants moving around, nothing to note heard
5. 25 May 2015 – 02:06 – low level noise in background
6. 25 May 2015 – 02:12 – people talking externally
7. 25 May 2015 – 02:21 – bass beat clearly heard for roughly 30 seconds
8. 25 May 2015 – 02:26 – low level bass/rumbling in background
9. 25 May 2015 – 02:32 – clear bass beat heard for roughly a minute
10. 25 May 2015 – 02:35 – faint bass/rumble in background
11. 25 May 2015 – 02:42 – clearly heard bass beat
12. 25 May 2015 – 02:57 – talking/raised voices heard outside

1.4 (Email complaint regarding the bass)

From: Alex Pershin [<mailto:alexpershin@live.co.uk>]

Sent: Sunday, August 16, 2015 02:28 AM

To: Joe Dray; Michael Heslehurst

Subject: RE: Noise monitoring visit - Spin Bar

Good morning Joe/Michael,

Thank you so much for visiting us tonight, it is greatly appreciated.

I just want to say that even though Geek House might contribute to the noise, we could clearly hear bass after 1:40am in our bedroom (Geek House is closed by that time), so we came out to check what is going on:

-strong bass is still coming from the Spin club

-club's kebab shop has some windows and main door open, as far as I remember there is only one tiny door that separates the actual shop from the dancefloor

-screaming/shouting from the smoking area at the back and kebab shop at front

While I am writing this email the bass is still strong enough which prevents us from sleeping, so it seems that the dialogue with Spin club should be continued... Please let me know your thoughts.

Many thanks in advance for your help.

Regards,
Alex

1.5 (Email complaint regarding the music)

From: alexpershin@live.co.uk

To: jdray@westberks.gov.uk; mheslehurst@westberks.gov.uk

Subject: RE: Noise monitoring visit - Spin Bar

Date: Tue, 1 Sep 2015 11:21:02 +0100

Hi Michael,

Hope you are doing well.

There was no change to the noise level coming from SPIN club last weekend, so we were up until 3:30am. It was really frustrating as I have been working this weekend (I had to wakeup at 5:30), so I would really appreciate if you could let me know plan of actions to resolve this matter.

Thanks in advance.

Regards,
Alex

1.6 (Email complaint regarding the bass and bottle refusal)

From: alexpershin@live.co.uk
To: mheslehurst@westberks.gov.uk
Subject: RE: Internal door to Spin Bar
Date: Mon, 5 Oct 2015 07:29:57 +0100

Hi Michael,

Situation has been improved a tiny bit, but it didn't resolve the problem - we still hear bass, especially after 2am. It is nowhere near as it was back in April, your email from April 30th says "They put the music on at its top level (93 dB... I stood directly outside the club I could hardly hear it and had to concentrate/ listen very hard to hear anything which is amazing considering how loud I found it previously. I then walked to the corner of Virgin Active and could hear no music at all", so please advise them to revert the settings as they were back then as soon as possible.

Also on Saturday night at 3:32am I have recorded evidence showing SPIN staff refusing glass bottles (see links below) which is breaching their license (see Annex 2, "Prevention of Public Nuisance"). It is not the first time we hear loud racket from glass bottles being refused right after club is closed

(~3:30am)

<http://1drv.ms/1Pdp0hi>

<http://1drv.ms/1PdpaVX>

Needless to say that this situation is very exhausting for us and affects our well-being badly as we cannot sleep properly, which is a basic human needs.

Based on the facts that amplified music is still being the issue (5 months after the compliance date in the abatement notice) and glass bottles are being refused outside permitted hours (license violation) please initiate review of their license.

In the meantime, bearing in mind that club owner can change limiter settings at any time I would really appreciate if you could let me know the contacts for enforcement officers to report nuisance, so they can prosecute the club if the problem reappears as according to law Environmental Health Officers have additional powers (to investigate, impose fine or confiscate noisy equipment) when it comes to the noise during the night hours.

I look forward to hear from you.

Many thanks in advance.

Regards,
Alex

1.7 (Email complaint regarding the bass)

From: alexpershin@live.co.uk
To: julian@sumner41.co.uk
CC: r.wyatt325@btinternet.com; yulia.syrovoiskaia@me.com
Subject: RE: The Spin Bar.
Date: Sun, 1 Nov 2015 03:02:08 +0000
Hi Julian,

Hope you are doing well.

I am just wondering if you had a chance to look at my previous email below?

It is Sunday morning and since 1:39am we could not sleep because of the continuous bass noise in the background coming from the spin club. It was especially noticeable at 1:48am, 1:50am, 1:56am, 02:50am and 2:56, so I went outside to confirm that the bass is banging through the kebab shop clearly showing that current soundproofing is not adequate for levels of amplified music (especially bass) being played.

I look forward to your response.

Regards,
Alex

1.8 (Email complaint regarding the music)

From: Alex Pershin [mailto:alexpershin@live.co.uk]

Sent: 29 December 2015 08:19

To: Joe Dray; Anna Smy

Cc: Julian; Yulia Syrovoyskaya

Subject: RE: Meeting to discuss Spin Bar

Hi Ann/Joe,

Hope you had a lovely Christmas break.

As you are probably aware, we have made the representation to reduce SPIN nightclub operational hours, so following our last meeting back in November I just wanted to check updates on the topics discussed (listed below) as we need to be aware of any changes prior to the hearing:

- Condition changes in the Spin Night Club license
- Measurements of background noise taken during the relevant times to see if noise levels from the club meet the conditions in the license

Also, as it was discussed during the meeting that owner is able to change level of music at any time, I was just wondering if someone from authorities had a chance to check if they are still using limiters installed that are configured to the level specified by the acoustic consultant?

The reason why we ask that, is because during the Christmas period level of music and bass seem to be significantly increased again - we could hear it not only in the master bedroom, but in the other room (away from Alexandra Court) where we temporarily sleep until the issue is resolved. Since we currently have recording device (to measure noise from Virgin Active), we have recorded the noise from SPIN club too (we used a different log sheet for that) and therefore would really appreciate if you could check those recordings and provide a report.

Would it be possible to also request reports for previous recordings (Feb 2015 and May 2015)?

In addition to that, I would be extremely grateful if I could obtain the copy of actual recordings in raw format (to build evidence if it comes to magistrates court), would it be possible to copy them over to my portable hard drive which I am happy to provide? I am well aware of IT policies that might restrict such operation, thus I am happy to pay for an "approved" hard drive purchased via council's IT dept.

I look forward to your response.

Many thanks in advance.

Regards,
Alex

1.9 (Log sheets from the recordings)

To be completed when recording equipment is installed

Noise Recording Log Sheet

Our reference:
 Property causing the noise: SPIN NIGHT CLUB Your address: 11 Elms Rd
 Position of equipment in property: MASTER BEDROOM

Day & Date	Time Started	Time Finished	Time Recorder Switched ON	Time Recorder Switched OFF	Brief details of noise and how you were affected	For Officer Use Only
27 Dec 2015	00:30	03:02	00:50	00:55	Strong Bass + music woke us up (Even though we sleep in the different bedroom)	
SAT night			01:01	01:06	Woke up The volume of music goes up and down as someone opens the door to the Night Club. We cannot sleep because of music	
			01:15	01:18	loud music + bass + drunk people	
			01:25	01:29	loud music + bass + drunk people	
			01:30	01:35	loud music + bass + drunk people	
			01:43	01:48	quiet bass but still disturbing + loud drunk people	
			01:59	02:06	loud music + drunk people	
			02:22	02:26	deep bass + music + drunk people	

Noise Recording Log Sheet Continued

Day & Date	Time Started	Time Recorder Switched ON	Time Recorder Switched OFF	Brief details of noise and how you were affected	For Officer Use Only

I confirm that the above information recorded on both sides of this document is true to the best of my knowledge and belief and I am willing for it to be used as evidence in the event of any subsequent formal action. I also confirm the noise recording equipment has not been moved or tampered with following installation by an officer of the council.

Signed:  Name (capital letters) **YULIA SYRODOISKAJA** Date: **27.12.2015**
ALEX PERSHIN

Please complete and sign this form. Ensure this is available for collection when the noise recording equipment is retrieved by an officer.

If you experience any problems, please call the relevant office:
 West Berkshire Council – 01635 503 242 Wokingham Borough Council – 0118 974 6000

1.10 (Email from Joe regarding restricting limiters control)

From: JDray@westberks.gov.uk

To: alexpershin@live.co.uk; ASmy@westberks.gov.uk

CC: julian@sumner41.co.uk; yulia.syrovoiskaia@me.com; MHeslehurst@westberks.gov.uk

Subject: RE: Meeting to discuss Spin Bar

Date: Mon, 4 Jan 2016 16:04:12 +0000

Alex

Since our meeting in November I have not had the opportunity to arrange further assessment of noise from the Spin Bar at times when they are operating. Dependent on officer availability I will go ahead and organise a visit as soon as possible. Given your concerns raised over the Christmas period we will also take the opportunity to review and audit the in-house procedures for the monitoring and control of noise to comply with licence conditions.

Since you raised concerns about the apparent increase in noise over Christmas I have contacted the owner and he denies that the noise limiter has been changed. I understand that Mike collected the monitoring equipment from you earlier today so we will review the data and audio files that you have recorded over the last couple of weeks.

The responsibility for complying with the licence conditions lies with the owner/licence holder and we cannot restrict his access to the noise limiting device. We would expect the licence holder to take 'ownership' of the noise limiter and to use it effectively to control the noise generated. We would however expect the equipment to be locked to prevent tampering by other members of staff or visiting performers.

We are in the process of preparing the raw data and reports that you have requested and will send that over to you in due course.

regards

Joe

1.11 (Email from Joe regarding the visits)

From: JDray@westberks.gov.uk
To: alexpershin@live.co.uk; ASmy@westberks.gov.uk
CC: julian@sumner41.co.uk; yulia.syrovoiskaia@me.com; MHeslehurst@westberks.gov.uk;
Licensing@wokingham.gov.uk
Subject: RE: Meeting to discuss Spin Bar
Date: Tue, 29 Dec 2015 12:37:21 +0000

Alex

Thank you for your email – I hope you both enjoyed your Christmas break.

I will ask the Licensing team to send you a copy of the most up to date licence.

I can confirm that no background monitoring took place and that the condition requiring comparison with background levels has been removed

We have not visited the Spin Bar to check whether the noise level set on the noise limiting device has been changed recently. It is helpful that you used the monitoring equipment to record what you experienced over the Christmas period and it is good that you are keeping separate logs. We would be happy to provide you with a summary report on that data. Mike will collect the equipment next week as previously discussed at a time convenient to you both.

I have asked Mike to prepare copies of raw data previously collected as requested – would it be convenient in CD format? We will also look at providing summary reports for that data but please be aware that the most recent data will be more relevant for you.

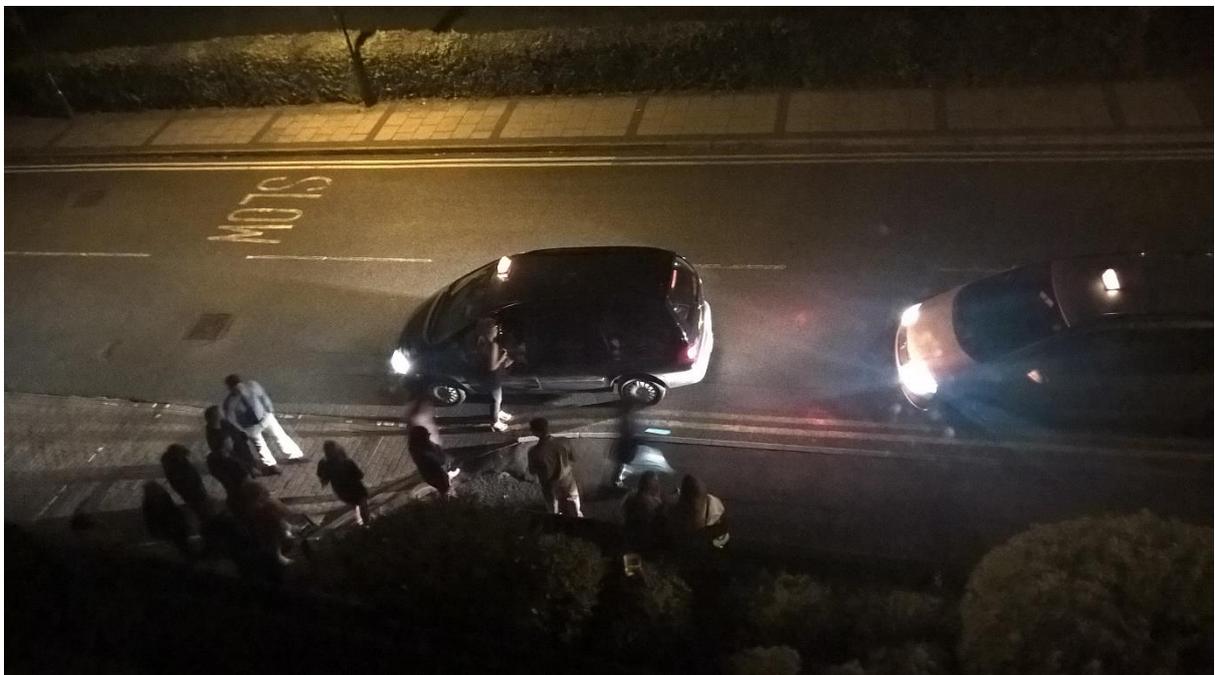
Regards

Joe

2.1 (Picture taken 06/09/2015 at 3:25am)



2.2 (Picture taken 06/09/2015 at 3:25am)



2.3 (Picture taken 06/09/2015 at 3:27am)



2.4 (Picture taken 19/09/2015 at 3:40am)



2.5 (Picture taken 19/09/2015 at 3:40am)



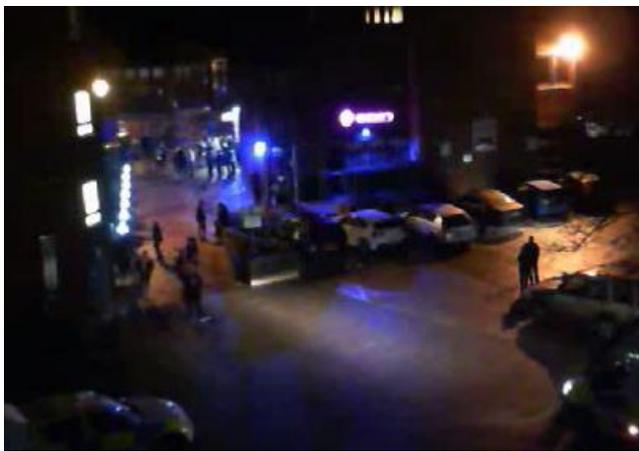
2.6 (Screenshots from the video recorded on December 25, 2015)

*full video is available on <http://1drv.ms/1ZWVezz>



2.7 (Screenshots from the video recorded on January 23, 2016)

*full video is available on <http://1drv.ms/1ZWVimJ>



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