

Briefing Report No: Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Review of a Premises Licence in respect of The Devon Dumpling, 108 Shiphay Lane, Torquay, TQ2 7BY

Wards Affected: **Shiphay**

To: **Licensing Sub-Committee** On: **06 February 2025**

Contact Officer: **Carrie Cottell**
Telephone: **01803 207079**
Email: Licensing@torbay.gov.uk

1. Key points and Summary

1.1 To consider and determine an application, in respect of the Premises detailed above, for a Review of a Premises Licence.

1.2 The application relates to all the Corporate Priorities within the Community Plan.

1.3 The matters raised relate to the Licensing Objectives “The Prevention of Crime and Disorder” and “The Prevention of Public Nuisance”.

1.4 Under the Licensing Act 2003 (the Act), the Licensing Authority (the Authority) before determining the application, must hold a hearing to consider the application and any relevant Representations.

The Authority must have regard to the application and any relevant Representations and take one or more of the steps as detailed below, as it considers appropriate for the promotion of the Licensing Objectives.

The steps are –

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the Designated Premises Supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;
- (f) to do nothing;

and for this purpose, the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

If the licence is subject to sections 19, 20 and 21 (requirement to include certain Mandatory Conditions in Premises Licences) they remain.

Where the Authority takes a step to modify the conditions or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

1.5 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Interested Parties and Responsible Authorities at the determination of the matter.

2. Introduction and application

2.1 The application has been made under Section 51 of the Act for a Review of the Premises Licence, at the Premises detailed above.

The Review application has been received from Julie Smart, Licensing Officer for the Licensing Authority who are a Responsible Authority. The grounds for the Review relate to:

- Offences under Section 136 of the Licensing Act 2003, in respect of non-compliance with conditions contained with the Premises Licence.
- Failure to make the designated smoking area compliant with the Smoke Free (Premises and Enforcement) Regulations 2006, to submit applications to vary the Designated Premises Supervisor (DPS), and to apply for a Minor Variation to amend the approved plan of the premises at the request of the Licensing Authority, and as required due to the erection of a bar in the garden of the licensed premises.
- Concerns that the DPS, Mr Raymond Lyon, does not appear to have day to day responsibility for the premises.

Full details of the application are shown in Appendix 1. Additional documents, including letters to the Premises Licence Holders, emails, photographs, and copies of the premises plans have been submitted by the Applicant to support the application. These are shown in Appendix 2.

A copy of the premises licence showing the activities, timings and conditions is attached at Appendix 3.

2.2 Torbay Council as the Licensing Authority, is satisfied that the Applicant is a person as defined under the Act, as being entitled to make such application and that the application is not frivolous or vexatious. The Authority is also satisfied that the administrative requirements of Section 51(3) (a) and (b) have been met and that the application is therefore, properly made.

3. Consultation

3.1 A notice stating a Review application had been made was issued by Torbay's

Councils Licensing Department and delivered by the Council's Licensing Officer, on 17th December 2024. Details of the Review have been advertised on the Council's website. The Notice advised of the grounds for the Review and requested representations should be made no later than 13th January 2025 to Torbay Council in writing. All Statutory consultees were served with a copy of the Review application.

3.2 There is 1 representation from a Responsible Authority in support of the application. This has been received from Tom West, Public Protection Officer for Torbay Council. The representation includes his statement, photographs showing the location of the premises, links to video footage and a timeline of noise complaints received. This is shown at Appendix 4 and relates to the Licensing Objective "The Prevention of Public Nuisance".

3.3 There are 3 representations from Interested Parties in support of the application, relating to "The Prevention of Crime and Disorder" and the "Prevention of Public Nuisance". These are shown at Appendix 5.

3.4 There is 1 neutral Representation received on behalf of an Interested Party who are the freehold owners of the premises. This is shown at Appendix 6.

3.5 We received 136 Representations supporting the premises and objecting to the review application. Many of the representations were invalid as they did not relate to any of the four licensing objectives. An email response was sent to all parties who made an invalid representation, containing guidance on how to make a valid representation and the date by which it must be resubmitted.

At the end of the consultation period 21 valid representations had been received. These are shown at Appendix 7.

3.6 The Premises Licence Holders, via their representative, have provided copies of the applications made since the review application was received, and these are shown at Appendix 8.

No other Representations have been received from any other Responsible Authority or any other Interested Parties other than those stated above.

4. Hearing

4.1 The Authority is required to conduct a hearing under provision of Section 52(2) of the Act.

4.2 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representations and the procedure to be followed at the hearing.

4.3 Once the matter is determined, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 8(2) of Schedule 5 to :-

- (a) the Applicant for the Review,
- (b) the holder of the Premises Licence, or
- (c) any other person who made relevant Representations in relation to the application.

In the event that an Appeal is entered, the determination will not have affect until the Appeal is either determined or withdrawn.

4.4 Following such Appeal, the Magistrates' Court may: -

(a) dismiss the Appeal,

(b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or

(c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,

and may make such an order as to costs as it thinks fit.

Rachael Hind
Regulatory Services Manager

Appendices

Appendix 1 Application for Review

Appendix 2 Additional Supporting Documents from the Applicant including Floor Plans

Appendix 3 Copy of the Current Premises Licence

Appendix 4 Representation from a Responsible Authority in support of the Application

Appendix 5 Representations from 3 Interested Parties in support of the Application

Appendix 6 Neutral Representation from 1 Interested Party

Appendix 7 Representations from 21 Interested Parties objecting to the Application

Appendix 8 Supporting Information from Premises Licence Holder

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:
Torbay Council Licensing Policy 2021-2026.