

Clerk: Governance Support  
Telephone: 01803 207013  
E-mail address: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)  
Date: Monday, 03 February 2025

Governance Support  
Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

Dear Member

## **STATUTORY LICENSING SUB-COMMITTEE - THURSDAY, 6 FEBRUARY 2025**

I am now able to enclose, for consideration at the Thursday, 6 February 2025 meeting of the Statutory Licensing Sub-Committee, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>	<b>Page</b>
5.	<b>Licensing Act Review in respect of The Devon Dumpling, 108 Shiphay Lane, Torquay</b>	(Pages 163 - 176)

Yours sincerely

Governance Support  
Clerk

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## Representations of Matthew Lyon

1. I have run the Devon Dumpling public house at 108 Shiphay Lane, Torquay TQ2 7BY in partnership with my father, Raymond Lyon, for approximately 22 years.
2. When the Devon Dumpling opened after lockdown there was necessarily much more activity in the outside areas of the pub from patrons. As had been experienced by many public house nationally, local residents, who had become accustomed to the lower background noise levels during lockdown, made a number of noise complaints which triggered a review of the licence. As a result of the review, the Council's licensing sub-committee imposed a new condition number 13 on the licence which stated "After 10pm patrons wishing to smoke, must use the designated smoking area, known as the cage". Julie Smart suggested that I either remove the roof of the cage or locate another suitable alternative area for smoking which would require a variation.
3. On 1<sup>st</sup> March 2024 Julie Smart also suggested that I submit a minor variation to the pub's licence to note the new wooden structure with a bar and TV in it that was then under construction.
4. I continued to look into making the cage compliant and to also look at alternative areas in the pub's outside areas to ensure compliance with the licensing conditions and the law on smoking shelters. During this time some patrons smoked in the street outside the front of the pub.
5. I acknowledge that Mr Tom West, Public Protection Officer, contacted my manager by e-mail on 8<sup>th</sup> March about the variation.
6. Julie Smart and Tom West visited the pub again on 4<sup>th</sup> July. I informed them of my understanding (and had indeed been advised) that the cage met the requirements of the Health Act 2006 and the Smoke Free (Premises and Enforcement) Regulations 2006. They also advised me that I should submit a minor variation if I wanted the condition removed from the licence which required patrons to be seated at all times (a condition which was proving difficult to comply with). I was also informed of three noise complaints received.
7. On 25<sup>th</sup> July 2024 my pub manager called Julie Smart to express concerns that removing the roof of the cage might lead to more noise complaints.
8. By letter dated 2<sup>nd</sup> October I received a letter saying that I needed to submit the proposed licensing variation by no later than 18<sup>th</sup> October 2024 or there would be a potential prosecution or a review of the licence. The deadline was extended to 25<sup>th</sup> October 2024 by a letter to my father dated 11<sup>th</sup> October.
9. On 16<sup>th</sup> October I received an e-mail from Mr West advising of a further noise complaint and I agreed to meet Mr Lyon on 22<sup>nd</sup> October. I subsequently met with Mr West and Julie Smart. They provided me with a DPS variation as I had expressed a

wish to be DPS. I signed the variation but they left it with me. I didn't really think about this at the time and rather assumed that I had done what I had been asked at the time. Mr West also agreed to provide a minor variation for me to sign to which I had to attach a plan and make payment over the phone. Some noise issues were discussed.

10. In Tom West's representation at p.77 of the committee agenda Mr West notes "Following out meeting, there was a noticeable improvement in the situation. One complainant said they'd witnessed staff members approaching patrons to ask that they leave quietly as well as moving customers on to prevent unnecessary congregation."
11. On 27<sup>th</sup> November I wrote to Mr West explaining that I was waiting for a contractor to inform me how much of the roof needed to be removed from the cage to comply with the anti-smoking legislation. I actually asked four contractors to complete the works before I finally found one that was prepared to carry out the work. There were also delays due to the weather.
12. On 29<sup>th</sup> November Julie Smart attended the pub. I was not aware that anyone sang happy birthday but that would not be an unusual and impromptu occurrence. I also understand that there were people in the garden. This was very shortly after 10am and my staff were pro-actively asking people to move inside.
13. The Licensing review is dated 16<sup>th</sup> December 2024. This was unfortunate timing as the contractor that I had finally asked to remove part of the cage roof completed the work the following day as had already been planned.
14. I submitted the minor variation to change the premises licence and the form to make me the DPS on 22.10.2024. I sincerely apologise to the licensing sub-committee for the delay in getting these forms to the Council. I also apologise for the delay in the works to the cage to ensure that it was compliant with the Health Act 2006 and the Smoke Free (Premises and Enforcement) Regulations 2006. This was at least in part due to my belief that the structure was compliant and then the unavailability of contractors but accept that I should have better kept the Council informed of progress in this regard.
15. There have been no noise complaints since the works to the cage were completed on 17<sup>th</sup> December 2024. Tom West had already noted a noticeable improvement at the premises following his meeting with me and others on 22<sup>nd</sup> October. It is acknowledged that this is primarily because patrons have no need to stand at the front of the premises or in the car park and it was this which was generating the complaints from residents. Since the review application was submitted further signs have been erected asking patrons to keep quiet and respect neighbours when they are in outside areas or leave the premises. I have implemented a new noise book where staff are required to record hourly noise in meaningful detail.

16. On 30<sup>th</sup> January Julie Smart attended the premises again. It was her view that the cage was still not compliant with the relevant anti-smoking rules. Rather than consider the point further I instructed contractors to remove a further section of the cage roof which happened on 31<sup>st</sup> January and there should be no question that it now complies with the relevant regulatory requirements for smoking shelters.
17. I have not commented on every e-mail in Julie Smart’s review. Unfortunately some of the e-mails were sent to the e-mail address [info@devondumpling.co.uk](mailto:info@devondumpling.co.uk) which is not regularly monitored and when it is, it tends to be used by staff to take bookings. I did not therefore receive all of the e-mails as alleged or at all which caused the delay in part. Whilst I have apologised for any errors in the way that I handled the matter, I am confident that all licensing issues are now dealt with.
18. Tom West has acknowledged that there has been a noticeable improvement since 22<sup>nd</sup> October 2024 and no further noise complaints have been received. It is submitted that there should be no justification to impose further noise conditions on the licence as suggested on pages 80 and 81 of Tom West’s report (removal of live music act exemption, earlier closing on a Friday and Saturday night and the requirement of CCTV) or at all. There are also many positive representations from nearby residents who say that they have not been disturbed by noise from the pub (pp. 101 to 144 including Councillor Darren Cowell). The issues that ultimately triggering the review were my admitted failures to submit the licence variation to show a structure in the pub garden and DPS change from my father to I promptly on request which I have apologised for and failure to make the smoking shelter (the cage) compliant with the relevant smoking laws which I have also apologised for but I have explained the reasons why this was the case above and the issue with the smoking shelter is primarily a public health and not a licensing matter.

I make this representation believing it to be true to the best of my knowledge and belief.

Signed ..... Dated .....  
Matthew Lyon

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# Agenda Item 5

## Appendix 10

**From:** [matt lyon](#)  
**To:** [Smart, Julie](#)  
**Subject:** The Devon dumpling  
**Date:** 06 January 2025 10:41:41

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Hi Julie

I've re sent everything this morning

I had to send the bigger form in a few emails as the file was struggling to send due to the size of it

We completed the work on the cage roof before Christmas to make it compliant with the smoking regulations.

Kind regards

Matt

Sent from my iPhone

**From:** [Smart, Julie](#)  
**To:** [matt.lyon](#)  
**Subject:** RE: Minor Variation  
**Date:** 07 January 2025 14:55:00

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Hi Matt

Ok I'll discuss that with my manager as I'm not an expert on smoking areas, and I'll let you know what she says.

Thanks  
Julie

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**From:** matt lyon <[REDACTED]>  
**Sent:** 07 January 2025 14:52  
**To:** Smart, Julie <[REDACTED]>  
**Subject:** Re: Minor Variation

Hi Julie  
It's just less than half  
We measured the side wall and found that area then removed the roof to the same amount  
Matt  
Sent from my iPhone

On 7 Jan 2025, at 2:46 pm, Smart, Julie <[REDACTED]> wrote:

Hi Matt

Thank you for the photo. It's a bit difficult to see how much of the roof has been removed but I'll be in Torquay on Thursday so if I have time I will pop in and have a look.

Yes I know Chris, and he has my contact details so no doubt will be in contact when convenient for him.

Thanks  
Julie

---

**From:** matt lyon <[REDACTED]>  
**Sent:** 07 January 2025 14:44  
**To:** Smart, Julie <[REDACTED]>  
**Subject:** Re: Minor Variation



Thank you Julie

I've just sent over a picture of the roof section removed and I will display the notice .

I think Chris hart will be in contact soon as he is acting for me at the hearing

(I think you know him)

Kind regards

Matt

Sent from my iPhone

On 7 Jan 2025, at 2:40 pm, matt lyon [REDACTED]

wrote:

<image0.jpeg>

Sent from my iPhone

On 7 Jan 2025, at 2:35 pm, Smart, Julie

[REDACTED] wrote:

Good afternoon Matt

I have accepted your minor variation application, and attach our acceptance letter.

The last date for consultation is 21 January 2025, and I will contact you immediately after this date to advise you of the progress of your application.

I have attached a completed site notice for you. This must be displayed at the premises until 22 January 2025.

Please send me a photograph of the site notice on display at the front of the premises.

I would also be grateful if you could send me some photographs of the cage showing that the roof has been removed.

If I can be of any further assistance, please do not hesitate to contact me.

Kind regards

**Julie**

<image001.jpg>

**Julie Smart** | Licensing Officer | Licensing and  
Public Protection Team  
Torbay Council, Community & Customer  
Services, Lower Ground Floor, Town Hall,  
Torquay TQ1 3DR



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<Acceptance Letter.pdf>

<Minor Variation Site Notice.doc>

<image001.jpg>

**From:** [Smart, Julie](#)  
**To:** [matt.lyon](#)  
**Subject:** The Cage  
**Date:** 10 January 2025 13:35:00  
**Attachments:** [image001.jpg](#)  
[The\\_cage\\_1.jpg](#)  
[The\\_cage\\_3.jpg](#)

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Hi Matt

I have spoken to Rachael, my manager, about the cage and the section of roof you have removed.

She informs me that it is your responsibility to demonstrate to us that the cage is now compliant with the smoke free regulations. She asks that you take several photographs showing the entire roof area, which clearly show where the roof is still in place and where the roof has been removed, and forward these to me.

She also requests that you send us the below measurements:

The rear wall of the cage – width and height

Both side walls – width and height

The front of the cage – the width and height of the entire front area, the width each of the 3 pillars, the width and height of the beam across the top, and the width and height of the wall and wood shown at ground level in the attached photos.

Thanks

**Julie**



**Julie Smart** | Licensing Officer | Licensing and Public Protection Team  
Torbay Council, Community & Customer Services, Lower Ground Floor, Town  
Hall, Torquay TQ1 3DR



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**From:** [Smart, Julie](#)  
**To:** [matt.lyon](#)  
**Subject:** FW: The Cage  
**Date:** 03 February 2025 09:59:00  
**Attachments:** [The cage 1.jpg](#)  
[The cage 3.jpg](#)  
[A Quick Guide to Smoke Free Spaces.docx](#)  
**Importance:** High

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Good morning Matt

As you are probably aware I visited the premises on Thursday 30 January 2025 with a colleague from our Food Team.

This visit was necessary as you have not responded to my email below, and I will need to update the Licensing Sub-Committee about the matters contained within the review application at the hearing on Thursday of this week.

On looking at the cage, my colleague and I noted that an area of the roof has been removed. In your email of 7 January 2025 you indicated that you had removed just less than half of the roof, however we counted 9 Perspex areas between the beams, with the Perspex having been removed from 3 of these areas, meaning that a third of the roof has been removed. Our initial visual assessment of the cage concluded that it was not at least 50% open.

We then took approximate measurements of all aspects of the cage as follows:

Area	Measurements in m	Area
Rear wall	6.40 m x 3.13 m h	20.03 m
Whole Roof area	6.40 x 4.46	28.54m
Area of Roof open	2.28 x 4.46	10.17 m
Side walls	4.46 x 2.42 h at one end, but 3.13 h at other end:  4.46 x 2.42 = 10.8 3.13 – 2.42 = 0.71 4.46 x 0.71 = 3.16 / 2 = 1.58 10.8 + 1.58 = 12.38 per wall 12.38 per wall x 2 = 24.76	24.76 m
Front opening 1	1.53 x 1.60	2.44 m
Front opening 2	2.21 x 2.28	5.04 m
Front opening 3	1.60 x 1.53	2.44 m

Please refer to the attached Quick Guides to Smoke Free Spaces, and note the section titled “Enclosed Premises” on page 1. This clearly states that a premises is enclosed if it has a roof or ceiling, or there are permanent openings in the walls but these make up less than half the area of the walls.

The guide then refers to the 50% rule and explains how to calculate the percentage of the area

that is open and the percentage of the area that is closed. I have used the above measurements to calculate what percentage of the cage is enclosed in accordance with this guide, as follows:

1. Measure the whole perimeter (P): Back wall + front wall + side walls =

$$\begin{array}{r} 20.03 \\ + 20.03 \\ + 24.76 \\ = 64.82 \text{ m (P)} \end{array}$$

2. Measure all enclosed areas (E): Back wall + side walls + (front wall minus open areas) =

$$\begin{array}{r} 20.03 \\ + 20.03 \\ + (20.03 - 9.92) 10.74 \\ = 50.8 \text{ m (E)} \end{array}$$

3. Divide E by P and times x 100 = % enclosed

$$\begin{array}{r} 50.8 / 64.82 \times 100 = \\ 0.78 \times 100 = \mathbf{78.3\% \text{ enclosed and only 21.7\% open}} \end{array}$$

As you will see from the above calculation, the cage is 78.3% enclosed and therefore does not meet the requirements of the smoke free regulations. During my visit to your premises on Friday 29 November 2024, I noted that there was a no smoking sign on the rear wall of the cage, but on Thursday 30 January 2025 this sign was not present and the tables were covered in ash indicating that the cage had recently been used for smoking. Please put up a no smoking sign immediately, and ensure that your staff inform all customers that smoking is not permitted in this area.

We also noted that both the new structure within the outside area and the structure at the top of the garden, do not meet the requirement of being at least 50% open and therefore smoking is not permitted within either structure. I advised your female manager of this on Thursday 30 January 2025 and requested that appropriate signage is displayed. In respect of the structure at the top of the garden she advised me that there was a no smoking sign in this area previously, but she did not know when or why it was removed.

Whilst in the outside area, I further noted that there were no signs reminding customers that they must be seated at all times. I advised your female manager that I was sure the licence contains a condition requiring signage to be displayed but I would need to check the licence in respect of this. I would draw your attention to Annexe 3 Conditions attached after a Review Hearing by the Licensing Authority number 11, on your premises licence, which states:

“Patrons using the outside area shall be seated and signage shall be prominently displayed in these areas notifying patrons of this.”

It is therefore apparent that this condition was not being complied with and I would take this

opportunity to remind that it is an offence under Section 136 of the Licensing Act 2003 to carry out licensable activities not in accordance with an authority (ie premises licence) and that a person found guilty of such an offence is liable to an unlimited fine, up to 6 months imprisonment, or to both.

It is extremely disappointing that in a period of 11 months you have failed to make the cage compliant with the smoke free regulations, despite me having sent you the attached guide on 3 occasions. It is also disappointing that you have again failed to respond to an email I have sent to you (below), necessitating a further visit to your premises by myself and a colleague , and that a further breach of conditions has been identified.

Please address these matters immediately.

Kind regards

Julie

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**From:** Smart, Julie

**Sent:** 10 January 2025 13:36

**To:** matt lyon [REDACTED]

**Subject:** The Cage

Hi Matt

I have spoken to Rachael, my manager, about the cage and the section of roof you have removed.

She informs me that it is your responsibility to demonstrate to us that the cage is now compliant with the smoke free regulations. She asks that you take several photographs showing the entire roof area, which clearly show where the roof is still in place and where the roof has been removed, and forward these to me.

She also requests that you send us the below measurements:

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Thanks

*Julie*

**TORBAY COUNCIL**

**Julie Smart** | Licensing Officer | Licensing and Public Protection Team  
Torbay Council, Community & Customer Services, Lower Ground Floor, Town

Hall, Torquay TQ1 3DR



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