



Wednesday, 17 July 2019

LICENSING SUB-COMMITTEE

A meeting of **Licensing Sub-Committee** will be held on

Thursday, 25 July 2019

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Doggett

Councillor Ellery

Councillor Foster

A prosperous and healthy Torbay

For information relating to this meeting or to request a copy in another format or language please contact:

Lisa Antrobus, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207087

Email: governance.support@torbay.gov.uk

www.torbay.gov.uk

LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the meeting.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Declarations of interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent items**
To consider any other items that the Chairman decides are urgent.
5. **The Morley Guest House, 16 Bridge Road, Torquay** (Pages 3 - 22)
To consider an application for a Premises Licence in respect of The Morley Guest House, 16 Bridge Road, Torquay.
6. **The Curious Kitchen, 14-16 Middle Street, Brixham** (Pages 23 - 42)
To consider an application for a Premises Licence in respect of The Curious Kitchen, 14-16 Middle Street, Brixham.
7. **Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence** (Pages 43 - 48)
To consider a report regarding a Hackney Carriage and Private Hire drivers licence.



Briefing Report No:

Public Agenda Item: **Yes**

Title: **The Morley Guest House, 16 Bridge Road, Torquay**

Wards Affected: **Tormohun**

To: **Licensing Sub Committee** **25 July 2019**

Contact Officer: **Mandy Guy**

☎ Telephone: **01803 208293**

✉ E.mail: **Licensing@torbay.gov.uk**

1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premise detailed above, for a new 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 The matter must be considered on its merits having received details of the issues arising either at a hearing or by written Representation if all parties have agreed that a hearing is not necessary. A decision must be made, having considered the Representations, either:-
 - (a) to grant the licence subject to
 - (i) such conditions as are consistent with the submitted operating Schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under Section 19, 20 or 21 be included in the licence;(Such conditions may differ in respect of different parts of the Premises and/or different activities).
 - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
 - (c) to refuse to specify a person in the licence as the Premises Supervisor;
 - (d) to reject the application.

- 1.5 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Applicant and Interested Party following the determination of the matter.

2. Introduction

- 2.1 An application has been made under Section 17 of the Act for a Premises Licence to permit licensable activities at the Premise detailed above. Details of the relevant pages of the application are shown in Appendix 1.

A brief description of the application, as follows:-

The provision of Recorded Music indoors from 08.00 until 23.00 seven days a week. There is also a request to allow music until 02.00 eight times a year under the heading of non-standard timings which includes days such as Christmas day and New Year's Eve.

The Supply of Alcohol on the premises from 08.00 until 23.00 seven days a week. There is also a request to allow the Supply of Alcohol eight times a year under the heading of non-standard timings which includes days such as Christmas day and New Year's Eve.

To be open to residents only 24 hours a day.

- 2.2 The Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 17(5) but is unable to issue the Licence, as a relevant Representation has been received. The Licensing Authority is also satisfied that the Representation has been received within the appropriate time scale, has not been subsequently withdrawn and is not vexatious or frivolous.

We have received one Representation signed by 2 Members of the Public in relation to the Licensing Objectives "The Prevention of Crime and Disorder " and "The Prevention of Public Nuisance". This is shown as Appendix 2.

There have been no other Representations received from any Responsible Authority or any other Interested Party.

- 2.3 The Authority is required to conduct a hearing by the provisions of Section 18(3) unless all parties agree that this is not necessary.
- 2.4 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representation and the procedure to be followed at the hearing.
- 2.5 If the application is refused, in whole or in part, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the Applicant.
- 2.6 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 2(1) of Schedule 5 to :-
- (a) The holder of the licence against any decision
- (i) to impose conditions on the licence, or

- (ii) to take any step to exclude a licensable activity or refuse to specify a person as Premises Supervisor.
- (b) Any person who made a relevant Representation who desires to contend
 - (i) that the licence ought not to have been granted, or
 - (ii) that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions, or taken any step to exclude a licensable activity or refuse to specify person as Premises Supervisor.

2.7 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 order as to costs as it thinks fit.

Steve Cox
Environmental Health Manager (Commercial)

Appendices

Appendix 1 Details of the application.

Appendix 2 One Representation from 2 Members of the Public.

Documents available in Members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Torbay Council Licensing Policy 2016-2021.



Torbay
Application for a premises licence
Licensing Act 2003

For help contact
<https://forms.torbay.gov.uk/ContactLicenseTrading>
 Telephone: 01803 208025

* required information

Section 1 of 21

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference	Not Currently In Use	This is the unique reference for this application generated by the system.
Your reference	The Morley Torquay	You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?

Yes No

Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

* First name LEE

* Family name HUBBARD

* E-mail

Main telephone number

Include country code.

Other telephone number

Indicate here if you work for a business

Are you:

Applying as a business or organisation, including as a sole trader
 Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means you are applying so you can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

Is your business registered in the UK with Companies House? Yes No

Note: completing the Applicant Business section is optional in this form.

Is your business registered outside the UK? Yes No

Business name THE MORLEY GUEST HOUSE

If your business is registered, use its registered name.

VAT number - NONE

Put "none" if you are not registered for VAT.

Legal status Partnership

Continued from previous page...

Your position in the business

Home country

The country where the headquarters of your business is located.

Business Address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

If you have one, this should be your official address - that is an address required of you by law for receiving communications.

Section 2 of 21

PREMISES DETAILS

I/we, as named in section 1, apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in section 2 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003.

Premises Address

Are you able to provide a postal address, OS map reference or description of the premises?

Address OS map reference Description

Postal Address Of Premises

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Further Details

Telephone number

Non-domestic rateable value of premises (£)

Section 3 of 21

APPLICATION DETAILS

In what capacity are you applying for the premises licence?

- An individual or individuals
- A limited company / limited liability partnership
- A partnership (other than limited liability)
- An unincorporated association
- Other (for example a statutory corporation)
- A recognised club
- A charity
- The proprietor of an educational establishment
- A health service body
- A person who is registered under part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales
- A person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of that Part) in an independent hospital in England
- The chief officer of police of a police force in England and Wales

Confirm The Following

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities
- I am making the application pursuant to a statutory function
- I am making the application pursuant to a function discharged by virtue of Her Majesty's prerogative

Section 4 of 21

NON INDIVIDUAL APPLICANTS

Provide name and registered address of applicant in full. Where appropriate give any registered number. In the case of a partnership or other joint venture (other than a body corporate), give the name and address of each party concerned.

Non Individual Applicant's Name

Name

Details

Registered number (where applicable)

Description of applicant (for example partnership, company, unincorporated association etc)

Continued from previous page...

Address

Building number or name

Street

District

City or town

County or administrative are

Postcode

Country

Contact Details

E-mail

Telephone number

Other telephone number

* Date of birth

* Nationality

Documents that demonstrate entitlement to work in the UK

Non Individual Applicant's Name

Name

Details

Registered number (where applicable)

Description of applicant (for example partnership, company, unincorporated association etc)

Continued from previous page...

Address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Contact Details

E-mail

Telephone number

Other telephone number

Date of birth

Nationality

Documents that demonstrate entitlement to work in the UK

Remove this applicant

Add another applicant

Section 5 of 21

OPERATING SCHEDULE

When do you want the premises licence to start?

/ /
dd mm yyyy

If you wish the licence to be valid only for a limited period, when do you want it to end

/ /
dd mm yyyy

Provide a general description of the premises

For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off- supplies you must include a description of where the place will be and its proximity to the premises.

Continued from previous page...

If 5,000 or more people are expected to attend the premises at any one time, state the number expected to attend

Section 6 of 21

PROVISION OF PLAYS

See guidance on regulated entertainment

Will you be providing plays?

Yes

No

Section 7 of 21

PROVISION OF FILMS

See guidance on regulated entertainment

Will you be providing films?

Yes

No

Section 8 of 21

PROVISION OF INDOOR SPORTING EVENTS

See guidance on regulated entertainment

Will you be providing indoor sporting events?

Yes

No

Section 9 of 21

PROVISION OF BOXING OR WRESTLING ENTERTAINMENTS

See guidance on regulated entertainment

Will you be providing boxing or wrestling entertainments?

Yes

No

Section 10 of 21

PROVISION OF LIVE MUSIC

See guidance on regulated entertainment

Will you be providing live music?

Yes

No

Section 11 of 21

PROVISION OF RECORDED MUSIC

See guidance on regulated entertainment

Will you be providing recorded music?

Yes

No

Standard Days And Timings

Continued from previous page...

MONDAY

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days
of the week when you intend the premises
to be used for the activity.

Start

End

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

Will the playing of recorded music take place indoors or outdoors or both?

- Indoors Outdoors Both

Where taking place in a building or other
structure tick as appropriate. Indoors may
include a tent.

State type of activity to be authorised, if not already stated, and give relevant further details, for example (but not
exclusively) whether or not music will be amplified or unamplified.

Music will be supplied via an 'Alexa' player. There will be only 1 of these players within the bar area.

State any seasonal variations for playing recorded music

For example (but not exclusively) where the activity will occur on additional days during the summer months.

We are requesting an extended finish time of 02:00 hrs as this may be required during season times of the year. Christmas
Eve, Christmas Day & Boxing Day. New Years Eve. St Patricks Day, St Georges Day. St Davids Day. St Andrews Day.

Continued from previous page...

Non-standard timings. Where the premises will be used for the playing of recorded music at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

We are requesting an extended finish time of 02:00 hrs as this may be required during season times of the year. Christmas Eve, Christmas Day & Boxing Day. New Years Eve. St Patricks Day, St Georges Day. St Davids Day. St Andrews Day.

Section 12 of 21

PROVISION OF PERFORMANCES OF DANCE

[See guidance on regulated entertainment](#)

Will you be providing performances of dance?

Yes No

Section 13 of 21

PROVISION OF ANYTHING OF A SIMILAR DESCRIPTION TO LIVE MUSIC, RECORDED MUSIC OR PERFORMANCES OF DANCE

[See guidance on regulated entertainment](#)

Will you be providing anything similar to live music, recorded music or performances of dance?

Yes No

Section 14 of 21

LATE NIGHT REFRESHMENT

Will you be providing late night refreshment?

Yes No

Section 15 of 21

SUPPLY OF ALCOHOL

Will you be selling or supplying alcohol?

Yes No

Standard Days And Timings

MONDAY

Start

End

Start

End

TUESDAY

Start

End

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days
of the week when you intend the premises
to be used for the activity.

Continued from previous page...

WEDNESDAY

Start	<input type="text" value="08:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

THURSDAY

Start	<input type="text" value="08:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

FRIDAY

Start	<input type="text" value="08:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

SATURDAY

Start	<input type="text" value="08:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

SUNDAY

Start	<input type="text" value="08:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

Will the sale of alcohol be for consumption:

- On the premises Off the premises Both

If the sale of alcohol is for consumption on the premises select on, if the sale of alcohol is for consumption away from the premises select off. If the sale of alcohol is for consumption on the premises and away from the premises select both.

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

We are requesting an extended finish time of 02:00 hrs as this may be required during season times of the year. Christmas Eve, Christmas Day & Boxing Day. New Years Eve. St Patricks Day, St Georges Day. St Davids Day. St Andrews Day.

Non-standard timings. Where the premises will be used for the supply of alcohol at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

We are requesting an extended finish time of 02:00 hrs as this may be required during season times of the year. Christmas Eve, Christmas Day & Boxing Day. New Years Eve. St Patricks Day, St Georges Day. St Davids Day. St Andrews Day.

State the name and details of the individual whom you wish to specify on the licence as premises supervisor

Continued from previous page...

Name

First name

Family name

Date of birth / /
dd mm yyyy

Enter the contact's address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Personal Licence number (if known)

Issuing licensing authority (if known)

PROPOSED DESIGNATED PREMISES SUPERVISOR CONSENT

How will the consent form of the proposed designated premises supervisor be supplied to the authority?

- Electronically, by the proposed designated premises supervisor
- As an attachment to this application

Reference number for consent form (if known)

If the consent form is already submitted, ask the proposed designated premises supervisor for its 'system reference' or 'your reference'.

Section 16 of 21

ADULT ENTERTAINMENT

Highlight any adult entertainment or services, activities, or other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children

Give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children, regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups etc gambling machines etc.

NOT APPLICABLE TO THIS APPLICATION

Continued from previous page...

Section 17 of 21

HOURS PREMISES ARE OPEN TO THE PUBLIC

Standard Days And Timings

MONDAY

Start

End

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days
of the week when you intend the premises
to be used for the activity.

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

THE MORLEY GUEST HOUSE BAR WILL ONLY BE OPEN TO RESIDENTS ONLY AND NOT THE GENERAL PUBLIC

Non standard timings. Where you intend to use the premises to be open to the members and guests at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

THE MORLEY GUEST HOUSE BAR WILL ONLY BE OPEN TO RESIDENTS ONLY AND NOT THE GENERAL PUBLIC

Continued from previous page...

Section 18 of 21

LICENSING OBJECTIVES

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e)

List here steps you will take to promote all four licensing objectives together.

The bar will be open to residents and owners only.
There will be zero tolerance of underage drinking and the use of illegal unregulated drugs on the premises.
I will monitor the amount of alcohol consumed and refuse if deemed necessary.
There will be signage asking guest to respect neighbours and other residents.
Clear "Challenge 25" information to prevent the supply of alcohol to under-age drinkers.

b) The prevention of crime and disorder

Not selling of alcohol to drunk or intoxicated customers.
Prevention and vigilance in illegal drug use.
We will continue to ensure customers use the premises in an orderly and respectful manner

c) Public safety

We will monitor the amount of alcohol consumed and refuse if deemed necessary. Signs showing all fire exits will be visible.
No smoking policy exists and only permitted outside in the designated area.
Internal and external lighting fixed to promote the public safety
implementation of underage ID checks
All parts of the premises and all fittings and apparatus therein, door fastenings and notices, lighting, heating, electrical, sanitary accommodation and other installations, will be maintained at all times in good order and in a safe condition

d) The prevention of public nuisance

Prominent, clear and legible notices will be displayed at the exit requesting residents to respect the needs of nearby residents and to leave the premises and the area quietly.
Any lighting on or outside the premises will be positioned and screened in such a way so as to not cause a disturbance to nearby residents.
Deliveries of goods necessary for the operation of the business will be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents.
Residents will be asked not to stand around loudly talking in the courtyard.

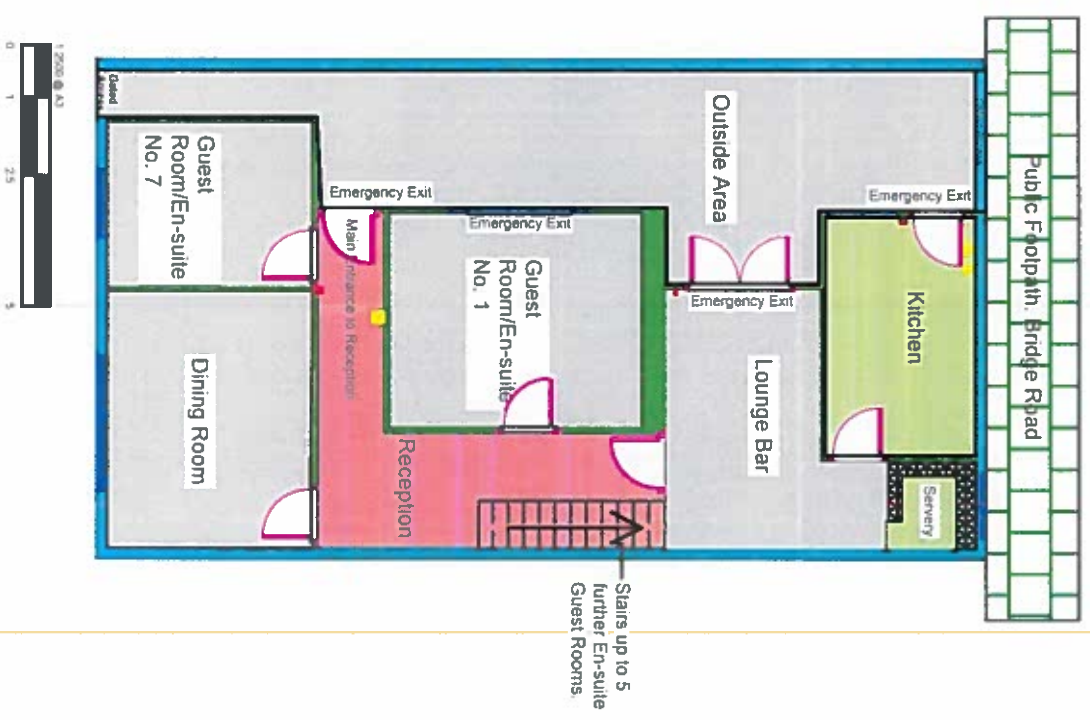
e) The protection of children from harm

"Challenge 25" sign which is a retailing strategy that encourages anyone who is over 18 but looks under 25 to carry acceptable ID (a card bearing the PASS hologram, a photographic driving license or a passport) if they wish to buy alcohol. The premises shall operate a Challenge 25 Policy and any individual who appears to be under the age of 25 will be required to produce an approved form of photographic identification as outlined within the Torbay Council Licensing Statement of Principles.

Section 19 of 21

NOTES ON DEMONSTRATING ENTITLEMENT TO WORK IN THE UK

The Morley Guest House Bar and Floor Plan



KEY

Fire Alarms

Fire Extinguishers

Fixed Bar Worktop

Licensable Activity Zones

Licensable Activity Not Permitted

No Public Access (Except Emergencies)

Boundary

Internal/External Walls

Licensing Activity is not permitted in the entrance, reception, stairs or landing.

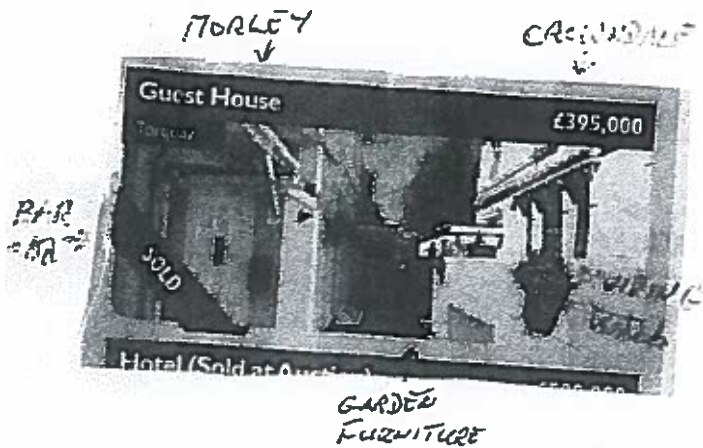
In the Lounge Bar, there are movable items of furniture, i.e. sofa, table and chairs, etc.

In the Outside Area, there are various movable chairs and benches. There is exterior lighting activated by PIR sensors, along with standard lighting.

Guests are requested to use their own toilet facilities in their own rooms.

Maximum capacity for Bar Lounge and Outside Area is 17 persons.

Any recorded music to be played in the Bar Lounge only. Not in the Outside Area.



Email -

18th June 2019

Dear Sirs,

I am writing to object to the proposed licence no. 054410, which is for a new Application for a premises Licence, for playing of recorded music and the sale by retail of alcohol at The Morley Guest House, 16, Bridge Road, Torquay, TQ25BA.

Our Objections are:-

- 1) The bar will be open until 23.00hrs, also 02.00 hrs on certain bank holidays and these times will encourage guests to return for a late drink.
- 2) Our properties entrance doors and guests bedroom windows are facing each other at a very close proximity.
- 3) The bar area has double fire doors which open out into the front yard area where there is garden furniture to use for smoking and recreation. The Crowndale Hotel also has this front yard area with a dividing wall, These yards are 2.9 metres in width that being only 3 to 5.8 meters of distance to my property walls and guest bedroom windows.
- 4) Any outside activity and noise in the yard area and the open doors into bar will be heard by our resting guests at The Crowndale Hotel.
A high percentage of our guests are elderly and return year after year due to the quiet and peaceful location and they retire to their rooms between 21.00hrs to 22.00 hrs and they would be disturbed by people at

The Morley Guest house outside drinking, talking and music playing, this does not happen at any other Guest house / Hotel in Bridge Road.

- 5) We at The Crowndale Hotel have already experienced guests being disturbed and received complaints after a weekend party which was held at The Morley Guest house. Party guests were sat outside drinking and talking until 12.45am. Any signage by The Morley Guest house cannot be guaranteed to keep noise levels low and be respected. The guests that complained are returning guests that return 2 to 3 times a year for that last 5 years along with other complaints from guests. Also on the weekend of the party there were 3 cars damaged by persons walking / stamping on car roofs, one car was directly parked outside The Morley and 2 (1 being our own) cars parked opposite in Bexley lane.
- 6) This application would affect our excellent trading record and compromise our exceptional reviews on social media.
i.e, Booking.com, Trip advisor, ect.. with nuisance noise levels due to such close proximity of our front yards. Our review feedback relates to a quiet and peaceful location.
Any negative feedback on noise from The Morley could affect and reduce our business greatly and even cause our closure.
We have owned the The Cowndale now for 5 years and previously 4.5 years in 1998 and have returned due to the quiet location.
We have made many friends with guests who return year after year for the tranquillity and peacefulness that the area has to offer.
- 7) We have great concerns as to whether our guests will return to us at The Crowndale if they are disturbed.
- 8) There are 5 public houses within a 5 minute walk from Bridge Road, The Lansdowne, TQ2 Club, DT's, Sporty's, The Bull & Bush,

I would be grateful if you could come and see our concerns for yourself with a site inspection.

We have enclosed a photo with both properties to show the close proximity.

Yours sincerely





: Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – An application for a Premises Licence in respect of The Curious Kitchen, 14-16 Middle Street, Brixham TQ5 8ER**

Wards Affected: **Furzeham with Summercombe**

To: **Licensing Sub Committee** **25 July 2019**

Contact Officer: **Mandy Guy**

☎ Telephone: **01803 208293**

✉ E.mail: **Licensing@torbay.gov.uk**

1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premise detailed above, for a new Premises Licence.
- 1.2 The application relates to all the Corporate Priorities within the Corporate 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 The matter must be considered on its merits having received details of the issues arising either at a hearing or by written Representation if all parties have agreed that a hearing is not necessary. A decision must be made, having considered the Representations, either:-
 - (a) to grant the licence subject to
 - (i) such conditions as are consistent with the submitted operating Schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under Section 19, 20 or 21 be included in the licence;(Such conditions may differ in respect of different parts of the Premises and/or different activities).
 - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
 - (c) to refuse to specify a person in the licence as the Premises Supervisor;
 - (d) to reject the application.

forward thinking, people orientated, adaptable - always with integrity.

- 1.5 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Applicant and Interested Party following the determination of the matter.

2. Introduction

- 2.1 An application has been made under Section 17 of the Act for a Premises Licence to permit licensable activities at the Premise detailed above. Details of the relevant pages of the application are shown in Appendix 1.

A brief description of the application, as follows:-

The provision of Recorded Music indoors from 09.00 until 23.00 seven days a week.

The Supply of Alcohol on the premises from 09.00 until 23.00 seven days a week.

To be open to the public from 09.00 until 23.30 seven days a week.

- 2.2 The Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 17(5) but is unable to issue the Licence, as a relevant Representation has been received. The Licensing Authority is also satisfied that the Representation has been received within the appropriate time scale, has not been subsequently withdrawn and is not vexatious or frivolous.

We have received a Representation from a Member of the Public in relation to the Licensing Objectives "The Prevention of Crime and Disorder" and "The Prevention of Public Nuisance". This is shown as Appendix 2.

There have been no other Representations received from any Responsible Authority or any other Interested Party.

- 2.3 The Authority is required to conduct a hearing by the provisions of Section 18(3) unless all parties agree that this is not necessary.

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

- 2.5 If the application is refused, in whole or in part, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the Applicant.

- 2.6 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 2(1) of Schedule 5 to :-

- (a) The holder of the licence against any decision
 - (i) to impose conditions on the licence, or
 - (ii) to take any step to exclude a licensable activity or refuse to specify a person as Premises Supervisor.
- (b) Any person who made a relevant Representation who desires to contend
 - (i) that the licence ought not to have been granted, or
 - (ii) that, on granting the licence, the Licensing Authority ought to have

imposed different or additional conditions, or taken any step to exclude a licensable activity or refuse to specify person as Premises Supervisor.

- 2.7 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 order as to costs as it thinks fit.

Steve Cox
Environmental Health Manager (Commercial)

Appendices

Appendix 1 Details of the application.

Appendix 2 Representation from a Member of the Public.

Documents available in Members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Torbay Council Licensing Policy 2016-2021.



Torbay
Application for a premises licence
Licensing Act 2003

For help contact
<https://forms.torbay.gov.uk/ContactLicenseTrading>
Telephone: 01803 208025

* required information

Section 1 of 21

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference	<input type="text" value="Not Currently In Use"/>	This is the unique reference for this application generated by the system.
Your reference	<input type="text" value="TCK Alcohol License Application"/>	You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.
Are you an agent acting on behalf of the applicant?	<input type="radio"/> Yes <input checked="" type="radio"/> No	Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

* First name	<input type="text" value="Kevin"/>	
* Family name	<input type="text" value="Chapman"/>	
* E-mail	<input type="text"/>	
Main telephone number	<input type="text"/>	Include country code.
Other telephone number	<input type="text"/>	
<input type="checkbox"/> Indicate here if you would prefer not to be contacted by email		

Are you:

- Applying as a business or organisation, including as a sole trader
 Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means you are applying so you can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

Is your business registered in the UK with Companies House?	<input checked="" type="radio"/> Yes <input type="radio"/> No	Note: completing the Applicant Business section is optional in this form.
Registration number	<input type="text" value="11331451"/>	
Business name	<input type="text" value="More TCK Ltd"/>	If your business is registered, use its registered name.
VAT number	<input type="text" value="- 298044669"/>	Put "none" if you are not registered for VAT.
Legal status	<input type="text" value="Private Limited Company"/>	

Continued from previous page...

Your position in the business

Home country

The country where the headquarters of your business is located.

Registered Address

Address registered with Companies House.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Section 2 of 21

PREMISES DETAILS

I/we, as named in section 1, apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in section 2 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003.

Premises Address

Are you able to provide a postal address, OS map reference or description of the premises?

Address OS map reference Description

Postal Address Of Premises

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Further Details

Telephone number

Non-domestic rateable value of premises (£)

Section 3 of 21

APPLICATION DETAILS

In what capacity are you applying for the premises licence?

- An individual or individuals
- A limited company / limited liability partnership
- A partnership (other than limited liability)
- An unincorporated association
- Other (for example a statutory corporation)
- A recognised club
- A charity
- The proprietor of an educational establishment
- A health service body
- A person who is registered under part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales
- A person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of that Part) in an independent hospital in England
- The chief officer of police of a police force in England and Wales

Confirm The Following

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities
- I am making the application pursuant to a statutory function
- I am making the application pursuant to a function discharged by virtue of Her Majesty's prerogative

Section 4 of 21

NON INDIVIDUAL APPLICANTS

Provide name and registered address of applicant in full. Where appropriate give any registered number. In the case of a partnership or other joint venture (other than a body corporate), give the name and address of each party concerned.

Non Individual Applicant's Name

Name

Details

Registered number (where applicable)

Description of applicant (for example partnership, company, unincorporated association etc)

Continued from previous page...

Limited company

Address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Contact Details

E-mail

Telephone number

Other telephone number

* Date of birth

uu

* Nationality

Documents that demonstrate entitlement to work in the UK

[Add another applicant](#)

Section 5 of 21

OPERATING SCHEDULE

When do you want the premises licence to start? / /
dd mm yyyy

If you wish the licence to be valid only for a limited period, when do you want it to end / /
dd mm yyyy

Provide a general description of the premises

For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off- supplies you must include a description of where the place will be and its proximity to the premises.

Town centre cafe bistro with forty covers.

Continued from previous page...

If 5,000 or more people are expected to attend the premises at any one time, state the number expected to attend

Section 6 of 21

PROVISION OF PLAYS

See guidance on regulated entertainment

Will you be providing plays?

- Yes No

Section 7 of 21

PROVISION OF FILMS

See guidance on regulated entertainment

Will you be providing films?

- Yes No

Section 8 of 21

PROVISION OF INDOOR SPORTING EVENTS

See guidance on regulated entertainment

Will you be providing indoor sporting events?

- Yes No

Section 9 of 21

PROVISION OF BOXING OR WRESTLING ENTERTAINMENTS

See guidance on regulated entertainment

Will you be providing boxing or wrestling entertainments?

- Yes No

Section 10 of 21

PROVISION OF LIVE MUSIC

See guidance on regulated entertainment

Will you be providing live music?

- Yes No

Section 11 of 21

PROVISION OF RECORDED MUSIC

See guidance on regulated entertainment

Will you be providing recorded music?

- Yes No

Standard Days And Timings

Continued from previous page...

MONDAY

Start

End

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days
of the week when you intend the premises
to be used for the activity.

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

Will the playing of recorded music take place indoors or outdoors or both?

- Indoors Outdoors Both

Where taking place in a building or other
structure tick as appropriate. Indoors may
include a tent.

State type of activity to be authorised, if not already stated, and give relevant further details, for example (but not
exclusively) whether or not music will be amplified or unamplified.

Unamplified

State any seasonal variations for playing recorded music

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Continued from previous page...

Non-standard timings. Where the premises will be used for the playing of recorded music at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

Section 12 of 21

PROVISION OF PERFORMANCES OF DANCE

See guidance on regulated entertainment

Will you be providing performances of dance?

Yes No

Section 13 of 21

PROVISION OF ANYTHING OF A SIMILAR DESCRIPTION TO LIVE MUSIC, RECORDED MUSIC OR PERFORMANCES OF DANCE

See guidance on regulated entertainment

Will you be providing anything similar to live music, recorded music or performances of dance?

Yes No

Section 14 of 21

LATE NIGHT REFRESHMENT

Will you be providing late night refreshment?

Yes No

Section 15 of 21

SUPPLY OF ALCOHOL

Will you be selling or supplying alcohol?

Yes No

Standard Days And Timings

MONDAY

Start

End

Start

End

TUESDAY

Start

End

Start

End

Give timings in 24 hour clock. (e.g., 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.

Continued from previous page...

WEDNESDAY

Start	<input type="text" value="09:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

THURSDAY

Start	<input type="text" value="09:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

FRIDAY

Start	<input type="text" value="09:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

SATURDAY

Start	<input type="text" value="09:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

SUNDAY

Start	<input type="text" value="09:00"/>	End	<input type="text" value="23:00"/>
Start	<input type="text"/>	End	<input type="text"/>

Will the sale of alcohol be for consumption:

- On the premises Off the premises Both

If the sale of alcohol is for consumption on the premises select on, if the sale of alcohol is for consumption away from the premises select off. If the sale of alcohol is for consumption on the premises and away from the premises select both.

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non-standard timings. Where the premises will be used for the supply of alcohol at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

State the name and details of the individual whom you wish to specify on the licence as premises supervisor

Continued from previous page...

Name

First name

Family name

Date of birth / /
dd mm yyyy

Enter the contact's address

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Personal Licence number (if known)

Issuing licensing authority (if known)

PROPOSED DESIGNATED PREMISES SUPERVISOR CONSENT

How will the consent form of the proposed designated premises supervisor be supplied to the authority?

- Electronically, by the proposed designated premises supervisor
- As an attachment to this application

Reference number for consent form (if known)

If the consent form is already submitted, ask the proposed designated premises supervisor for its 'system reference' or 'your reference'.

Section 16 of 21

ADULT ENTERTAINMENT

Highlight any adult entertainment or services, activities, or other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children

Give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children, regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups etc gambling machines etc.

Continued from previous page...

Section 17 of 21

HOURS PREMISES ARE OPEN TO THE PUBLIC

Standard Days And Timings

MONDAY

Start

End

Start

End

Give timings in 24 hour clock.
(e.g., 16:00) and only give details for the days
of the week when you intend the premises
to be used for the activity.

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

State any seasonal variations

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non standard timings. Where you intend to use the premises to be open to the members and guests at different times from those listed in the column on the left, list below

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

Continued from previous page...

Section 18 of 21

LICENSING OBJECTIVES

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e)

List here steps you will take to promote all four licensing objectives together.

b) The prevention of crime and disorder

1.
As far as is practical, persons on or leaving the premises and using adjacent car parks and highways shall be reminded to conduct themselves in an orderly manner and not in any way to cause annoyance to residents or persons passing by.
2.
CCTV capable of covering both inside and outside the premises in positions agreed with both the council and the Police shall be provided to enhance the safety of patrons and staff. All cameras must be maintained in good working order and must continually record and the tapes must be secured retained for a minimum of 14 days.
3.
A written drugs policy must be in force at the premises with the objective of securing, as far as reasonably practicable, the safety of patrons and others attending the premises.
4.
The provision of plastic glass and bottles shall be provided depending on the type of entertainment provided and the number and behaviour of patrons.
5.
Bar staff shall be suitably trained to prevent the sale of alcohol to under 18's.
6.
Regular glass and bottle collection shall be undertaken throughout the premises.
7.
Patrons shall not be permitted to leave the premises with any glass or bottles which belong to the premises.
8.
Suitable beverages other than intoxicating liquor shall be equally available for consumption with or otherwise as an ancillary to meals served in the licensed premises.

c) Public safety

1.
Adequate access must be provided for emergency vehicles.
2.
The fire safety measures with which the premises are provided, will be maintained in good working order, and their adequacy will be determined on a regular basis, by carrying out a fire risk assessment, as required by regulation 11 in

Continued from previous page...

accordance with the Regulatory Reform (Fire Safety) Order 2005. I understand that the safety of occupants is also influenced by numbers of persons present, their disposition and the activities taking place, and therefore undertake to maintain a safe occupancy level.

All parts of the premises and all fittings and apparatus therein, door fastenings and notices and the seating, lighting, heating, electrical, ventilation, sanitary accommodation, washing facilities and other installations, shall be maintained at all times in good order and in a safe condition.

3. The seating shall at all times ensure free unobstructed access to all exits doors.

4. All parts of the premises and all fittings and apparatus therein, door fastenings and notices and the seating, lighting, heating, electrical, ventilation, sanitary accommodation, washing facilities and other installations, shall be maintained at all times in good order and in a safe condition.

5. When disabled people are present on the premises, adequate arrangements shall be in place to enable their safe evacuation in the event of an emergency and disabled persons must have been made aware of those arrangements.

d) The prevention of public nuisance

1. Noise or vibration must not emanate from the premises such as to cause persons in the neighbourhood to be unreasonably disturbed. In general terms, noise from the premises shall not be audible within any noise sensitive premises (e.g. dwelling) with windows open for normal ventilation especially after 11:00pm. This will be assessed from the boundary to the nearest residential properties, on all sides of the licensed premises. The criteria that will be applied are:-

- i) Before 11:00pm - noise emanating from the premises will not be clearly distinguished above other noise.
- ii) After 11:00pm - noise emanating from the premises will not be distinguishable above background levels of noise.
- iii) The local authority will reserve the right in cases of tonal noise and where premises are attached to other (i.e. semi's and terraced properties), to make further assessments from within the residential property.

2. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

3. The placing of refuse, such as bottles into receptacles outside the premises must take place at times that will prevent disturbance to nearby properties.

4. Deliveries of kegs, bottles, food and other materials necessary for the operation of the business must be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents.

5. Patrons shall be asked not to stand around talking in the street outside the premises and asked to leave the vicinity quickly and quietly.

6. The licensee shall ensure that staff shall arrive early morning or depart late at night when the business has ceased trading conduct themselves in such a manner to avoid causing disturbance to nearby residents.

7. Specific taxi operators must be nominated for staff and customers use. Such operators' telephone numbers shall be advertised to customers. The operators and all drivers are aware that they should arrive and depart as quickly as possible should not sound vehicle horns as a signal of their arrival or leave engines idling unnecessarily. In addition staff shall leave as quietly as possible, particularly at night and early in the morning.

Continued from previous page...

8.
Facilities for depositing litter and the collection of litter generated by patrons shall be available and maintained.

e) The protection of children from harm

1.
The premise shall adopt Challenge 25 Policy whereby any person who looks under the age of 25 shall be required to produce an approved form of photographic identification as outlined within the Torbay Council Licensing Statement of Principles.

2.
Children must be accompanied by a responsible adult.

Section 19 of 21

NOTES ON DEMONSTRATING ENTITLEMENT TO WORK IN THE UK

Continued from previous page...

Entitlement to work/immigration status for individual applicants and applications from partnerships which are not limited liability partnerships:

A licence may not be held by an individual or an individual in a partnership who is resident in the UK who:

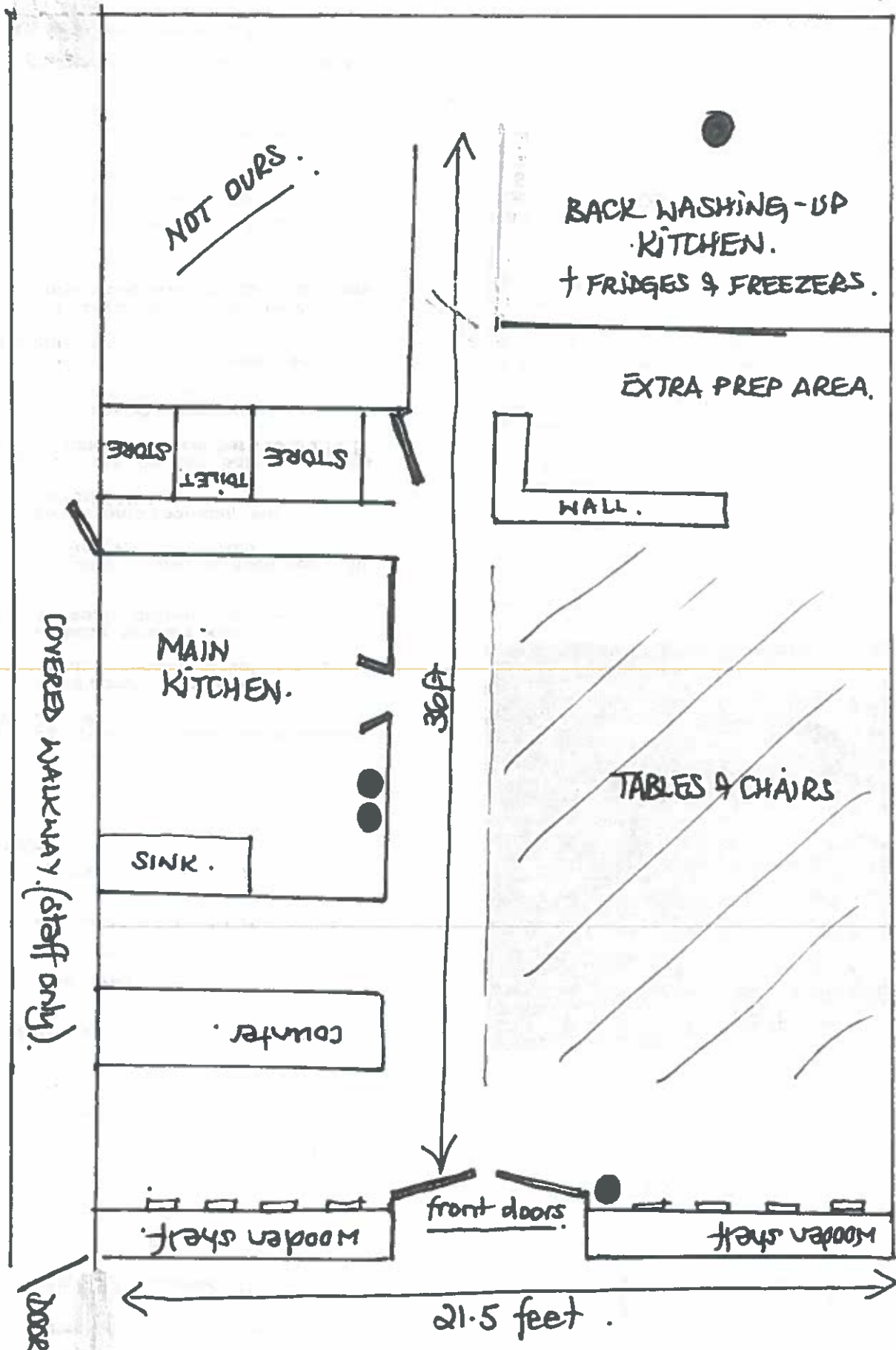
- does not have the right to live and work in the UK; or
- is subject to a condition preventing him or her from doing work relating to the carrying on of a licensable activity.

Any premises licence issued in respect of an application made on or after 6 April 2017 will become invalid if the holder ceases to be entitled to work in the UK.

Applicants must demonstrate that they have an entitlement to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensable activity. They do this in one of two ways: 1) by providing with this application copies or scanned copies of the documents listed below (which do not need to be certified), or 2) by providing their 'share code' to enable the licensing authority to carry out a check using the Home Office online right to work checking service (see below).

Documents which demonstrate entitlement to work in the UK

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK [please see note below about which sections of the passport to copy].
- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.



COVERED WALKWAY (staff only).

DOOR TO STREET.

NOT OURS.

STORE TOILET STORE

BACK WASHING-UP KITCHEN.
+ FRIGES & FREEZERS.

EXTRA PREP AREA.

L WALL.

MAIN KITCHEN.

SINK.

counter.

TABLES & CHAIRS

36ft

front doors

wooden shelf

wooden shelf

21.5 feet .

MIDDLE STREET

● = Fire extinguisher



22nd June 2019

Re: License application 054465 Curious Kitchen 14-16 Middle Street.

To Whom It May Concern,

I feel I need to ask that an alcohol and music license should not be permitted for this business.

1. The Prevention of Crime and Disorder

We have a well documented problem with anti-social behaviour in the town square opposite this business and the granting of yet another license to serve alcohol in the town is only likely to cause this to continue. Friday and Saturday evening's in particular see noise and disruption to local residents until well gone midnight nearly every week.

2. The Prevention of Public Nuisance

Living next door as I do, we also have an issue already with the noise and vibration from the extractor fans from the Curious Kitchen (which are attached to my property) that run from 7am until 5pm, 7 days a week, at present. Making sitting on my patio for a little peace and quiet are a thing of the past. If a license was granted for them to serve alcohol until 23:00 hrs, I am assuming the same fans will be running until then also. We have already had issues where they have forgotten to turn off the fans at night, meaning that we have had to put up with the noise through out the night on several occasions.

I do hope that you will think of the people who have to live with this and how it affecting their quality of life before making a decision.

Many thanks and regards,



Public Agenda Item: **Yes**

Title: **Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **25th July 2019**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Gary O'Shea**
Telephone: **01803 207631**
E.mail: gary.oshea@torbay.gov.uk

1. What we are trying to achieve

- 1.1 This report asks Members to consider relevant facts relating to the holder of a Torbay Council issued dual Hackney Carriage and Private Hire drivers licence. This follows receipt of a driving ban issued by Cornwall Magistrate's Court and a failure of the licence holder to meet specific requirements as set out in the current Hackney Carriage and Private Hire Licensing Policy 2018 to 2022, by virtue of having failed to inform Torbay Council of the ban. Members are requested therefore to determine on the facts laid before them, whether or not the Applicant remains a 'fit and proper person' to hold such a licence.

2. Recommendation(s) for decision

- 2.1 This matter must be determined on its individual merits and any supporting facts or testimony. Therefore, there is no recommendation. The options available to Members however, are highlighted in paragraph **A3.1 of Annex 1** to this report.

3. Key points and reasons for recommendations

- 3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriage and Private Hire Vehicles and drivers within Torbay.

- 3.2 Sections 51 and 59 of the 1976 Act in conjunction with section 46 of the Town Police Clauses Act 1847 make provision for the licensing of drivers and state that a district council shall not grant a licence to drive a Private Hire or Hackney Carriage vehicle unless they are satisfied that the driver is a 'fit and proper' person to hold a driver's licence.
- 3.3 There is no judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver or an applicant is indeed fit and proper to hold such a licence. In the absence of such a test, a number of local tests have developed over time which have stood up to scrutiny in the Courts and are therefore commonly accepted practices amongst the majority of Licensing Authorities.
- 3.4 Torbay Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is that they should possess and maintain a suitable driving ability and driving history.
- 3.5 This report follows a review of the DVLA driver data base in respect of Mr Danny Marconi, who holds a Torbay Council dual drivers' licence number LD0540, where it was discovered that on 5th October 2018, Mr Marconi had received a driving ban. Further, the ban had not been reported to the Licensing Authority as required by virtue of its Policy.
- 3.6 Mr Marconi was written to on 4th July 2019 and requested to provide explanation as to the events surrounding the driving ban, as well as stating reasons as to why the Licensing Authority was not informed.
- 3.7 Relevant aspects of the Policy state:
- 5.13 Where an existing licensed driver receives more than 9 (nine) penalty points on their driving licence that are current at any given time, that driver will be required to appear before a Licensing Sub-Committee. This will be in order to explain the circumstances and for consideration as to whether they remain a 'fit and proper' person to continue to hold a Torbay Council dual drivers licence.
- 5.14 Drivers who fail to notify the Licensing Authority of any endorsements received may face disciplinary action, which could result in appearance before a Licensing Sub-Committee and/or suspension or revocation of the drivers licence issued to them.
- 5.20 The Licensing Authority at its discretion, may require specific training to be undertaken where deemed appropriate. This training may include disability awareness, manual handling, equalities awareness, or anything else as deemed appropriate by the Licensing Authority.
- 6.4 Failure to inform the Licensing Authority within 5 working days of any convictions, cautions and fixed penalty notices during the licensing application and/or licensed period (i.e. once the licence is granted), may result in suspension or revocation of the drivers licence. Similarly, where convictions, cautions or fixed penalty notices are notified, depending on the nature of the infraction, this may result in suspension or revocation of the drivers licence.
- 3.8 It is for the Licensing Sub-Committee to consider whether Mr Marconi remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and

Private Hire drivers' licence.

- 3.9 There is a right of Appeal to the Magistrates' Court as provided under section 61 (3) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

For more detailed information on this proposal please refer to the Supporting Information.

**Steve Cox
Environmental Health Manager (Commercial)**

Annex 1 - Supporting information

A1. Introduction and history

- A1.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.
- A1.2 Sections 51 (in respect of Private Hire drivers) and 59 (in respect of Hackney Carriage drivers) of the Act state that a district council shall not grant a licence to drive a Private Hire vehicle or Hackney Carriage unless they are satisfied that the driver is a 'fit and proper person to hold a driver's licence'.
- A1.3 There is no judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver or an applicant is indeed fit and proper to hold such a licence. In the absence of such a test, a number of local tests have developed over time which have stood up to scrutiny in the Courts and are therefore commonly accepted practices amongst the majority of Licensing Authorities.
- A1.4 Torbay Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is that they should possess a suitable driving ability and driving history.
- A1.5 This report follows a review of the DVLA driver data base in respect of Mr Danny Marconi, where it was discovered that on 31 July 2018, Mr Marconi was convicted in respect of an SP30 (speeding offence), receiving the following penalty:
- A disqualification from driving for a period of 40 days to take effect between 5 October 2018 and 13 November 2018
 - A fine amounting to £325

In addition, it is noted that Mr Marconi had failed to report this conviction to the Licensing Authority as required under its current Policy.

- A1.6 Relevant excerpts of the Policy are highlighted in 3.7 of the report (above), where section 5.13 refers to matters where more than 9 penalty points are received, however, whilst Mr Marconi does not have more than 9 Points, bans are effectively given when 12 are reached, or in matters where the offence is considered to be very serious. It is notable that the ban given to Mr Marconi was in response to an SP30, namely speeding in a 30 MPH zone, this would suggest excessive speed within that zone. Therefore, Mr Marconi was written to on 4th July 2019 and requested to provide explanation as to the events surrounding the driving ban, as well as stating reasons as to why the Licensing Authority was not informed.
- A1.7 Of particular relevance is section 5.14 of the Policy, which states:
- 5.14 Drivers who fail to notify the Licensing Authority of any endorsements received may face disciplinary action, which could result in appearance before a Licensing Sub-Committee and/or suspension or revocation of the licence issued to them.*

And 6.4 of the Policy, which states:

6.4 Failure to inform the Licensing Authority within 5 working days of any convictions, cautions and fixed penalty notices during the licensing application and/or licensed period (i.e. once the licence is granted) may result in suspension or revocation of the driver licence. Similarly, where convictions, cautions or fixed penalty notices are notified, depending on the nature of the infraction, this may result in suspension or revocation of the driver licence.

A1.8 At the time of writing this report, there has been no response from Mr Marconi to the letter of 4th July 2019. Therefore, no details are available as to the actual offence itself. Mr Marconi has been invited to attend the hearing in order to answer any questions and to explain the circumstances surrounding his conviction.

A1.9 Members are requested to consider whether Mr Marconi remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.10 There is a right of Appeal to the Magistrates' Court against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 There are two risks. The first risk to be considered is whether Mr Marconi presents a risk to the general public should he continue to hold a licence to drive a Hackney Carriage or Private Hire vehicle.

A2.1.2 The second risk relates to the potential for an appeal should Mr Marconi's licence be revoked or suspended and/or have additional conditions imposed.

A3. Options

A3.1 The options are:

- (i) To do nothing, if satisfied that Mr Marconi remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To require additional training and/or to successfully undertake a Driving Standards test
- (iii) To suspend Mr Marconi's licence to drive a Hackney Carriage or Private Hire vehicle and to require that additional training or a Driving Standards test is required
- (iv) To revoke Mr Marconi's drivers licence on grounds that he is no longer considered to be a 'fit and proper' person to hold such a licence

A4. Summary of resource implications

A4.1 There are some resource implications if there is an Appeal to the Magistrates'

Court.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no environmental sustainability issues, equalities or crime and disorder issues other than as outlines in this report.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter and there is no requirement for the Licensing Sub-Committee to consult the public in this matter.

A7. Are there any implications for other Business Units?

A7.1 There are no implications for other business units.

Documents available in members' rooms

None

Appendices

None

Background Papers:

The following documents/files were used to compile this report:

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2018 to 2022