

Wednesday, 25 November 2020

**ADJOURNED LICENSING SUB-COMMITTEE**

An adjourned meeting of **Licensing Sub-Committee** will be held on

**Thursday, 3 December 2020**

commencing at the rising of the Licensing Sub-Committee held at 9.30 am  
(the estimated start time of the Adjourned Licensing Sub-Committee is 11.00 am)

The meeting will be held remotely via Zoom (the links to the meeting are set  
out below)

<https://us02web.zoom.us/j/89010673051?pwd=Z2pGdHVMaHYybFJXYVIZTFUzUGxidz09>

Meeting ID: 890 1067 3051

Passcode: 665517

One tap mobile

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**Members of the Committee**

Councillor Barnby

Councillor Ellery

Councillor Kennedy

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**Together Torbay will thrive**

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or [Blackberry Playbook](#). 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**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) - [www.torbay.gov.uk](http://www.torbay.gov.uk)

# LICENSING SUB-COMMITTEE AGENDA

## 1. **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.)

## 2. **Summary Review Application - The Sporty's, 80 Belgrave Road, Torquay** (Pages 4 - 13)

To consider an application for a Summary (Expedited) Review of a Premises Licence in respect of The Sporty's, 80 Belgrave Road, Torquay.

### **Instructions for the press and public for joining the meeting**

If you are using an iPad you will need to install Zoom which can be found in the App Store. You do not need to register for an account just install the software. You only need to install the software once. For other devices you should just be taken direct to the meeting.

### **Joining a Meeting**

Click on the link provided on the agenda above and follow the instructions on screen. If you are using a telephone, dial the Zoom number provided above and follow the instructions. **(Note:** if you are using a landline the call will cost up to 13p per minute and from a mobile between 3p and 55p if the number is not covered by your inclusive minutes.)

You will be placed in a waiting room, when the meeting starts the meeting Host will admit you. Please note if there are technical issues this might not be at the start time given on the agenda.

Upon entry you will be muted and your video switched off so that only the meeting participants can be seen. When you join the meeting the Host will unmute your microphone, ask you to confirm your name and update your name as either public or press. Select gallery view if you want see all the participants.

If you have joined the meeting via telephone, your telephone number will appear on screen and will be displayed for all to see until the Host has confirmed your name and then they will rename your telephone number to either public or press.

### **Speaking at a Meeting**

If you are registered to speak at the meeting and when it is your turn to address the Meeting, the Chairman will invite you to speak giving the Host the instruction to unmute your microphone and switch your video on (where appropriate) therefore please pause for a couple of seconds to ensure your microphone is on.

Upon the conclusion of your speech/time limit, the Host will mute your microphone and turn off your video.

### **Meeting Etiquette for Registered Speakers - things to consider when speaking at public meetings on video**

- Background – the meeting is public and people will be able to see what is behind you therefore consider what you will have on display behind you.
- Camera angle – sit front on, upright with the device in front of you.
- Who else is in the room – make sure you are in a position where nobody will enter the camera shot who doesn't want to appear in the public meeting.
- Background noise – try where possible to minimise background noise.
- Aim to join the meeting 15 minutes before it is due to start.

Devon & Cornwall Police  
HQ Middlemoor  
Devon

## **CERTIFICATE UNDER SECTION 53A(1)(b) OF THE LICENSING ACT 2003**

I hereby certify that in my opinion the premises described below are associated with serious crime.

Premises: The Sporty's, 80 Belgrave Road, Torquay, Devon, TQ2 5HZ

Premises licence number (if known): PL0420

Name of premises supervisor (if known): Mr James William LANG

I am a Superintendent in the Devon and Cornwall police force.

I am giving this certificate because I am of the opinion that other procedures under the Licensing Act, such as a Review of the Premises Licence under Section 51 of the Licensing Act 2003, are inappropriate due to the seriousness of the concerns identified in respect of this premises.

This incident involves the public house opening to the public for consumption of alcohol on the premises during Lockdown 1, in contravention of the Coronavirus Health Protection Regulations 2020. On this occasion advice was given to Mr LANG concerning his conduct.

When licensed premises were allowed to re-open for consumption on the premises, on Saturday 4 July 2020, a joint agency visit was conducted by my officers and Torbay Council staff. During the course of that visit Mrs Smart (Police Licensing Officer) and Mr Martin (Torbay Council Public Protection Officer) were not satisfied that adequate measures were in place to reduce the spread of coronavirus or protect customers and Mr LANG had not demonstrated a responsible attitude in the management of the premises

On Wednesday 11 November 2020 information was received that people had been seen entering the premises. Officers attended and identified that the consumption of alcohol was taking place therein.

The concern of Devon and Cornwall Police is that should this premises be allowed to re-open when the closure restrictions are lifted, this could endanger the life and/or health of the public and therefore immediate steps are required to consider Mr LANG's suitability to manage the premises.

I am conscious of the DCMS guidance on the use of "Exedited Reviews" and given the emphasis that is given to use of this power to tackle serious crime, my feelings that this process is deemed appropriate are further enforced.

Signed: B. Davison Date: 30/11/20  
Superintendent  
Brent DAVISON

Delete as applicable.

2 Include business name and address and any other relevant identifying details.

3 Insert rank of officer giving the certificate, which must be superintendent or above.

4 Give a brief description of why other procedures such as a standard review process are thought to be inappropriate, e.g. the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned.

**FORM FOR APPLYING FOR A SUMMARY LICENCE REVIEW**

TORBAY COUNCIL, LICENSING SECTION, C/O TOWN HALL, CASTLE CIRCUS,  
TORQUAY, TQ1 3DR

**Application for the review of a premises licence under section 53A of the  
Licensing Act 2003 (premises associated with serious crime or disorder).**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. **Use additional sheets if necessary.**

I, Superintendent Brent DAVIDSON, the Chief officer of police for the South Devon area apply for the review of a premises licence under Section 53A of the Licensing Act 2003

**1. Premises details:**

Postal address of premises, or if none or not known, ordnance survey map reference or description: The Sparty's, 80 Belgrave Road

Post town: Torquay

Post code (if known): TQ2 5HZ

**2. Premises licence details:**

Name of premises licence holder (if known): Mr James William LANG

Number of premises licence holder (if known): PL0420

**3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read guidance note 1]:**

I confirm that a certificate has been given by a senior member of the police force for the police area above that in my opinion the above premises are associated with

serious crime, and the certificate accompanies this application.  
(Please tick the box to confirm) X

**4. Details of association of the above premises with serious crime, serious disorder or both:**

[Please read guidance note 2]

Coronavirus was deemed a pandemic earlier in the year. On 20 March 2020 the Government gave directions for pubs to close, with the Coronavirus Health Protection Regulations 2020 coming into force on 26 March 2020. These regulations required the closure of specified businesses in which food and drink were sold for consumption on the premises (though allowing for selling of the same to be consumed off the premises). The relevant businesses were listed but included restaurants, cafes, bars and public houses.

On 4 July 2020 licensed premises were authorised to open for consumption on the premises and advice regarding making premises "covid-secure" was published on the gov.uk website. The Police and Council Licensing Teams were also available to provide advice where requested.

Unfortunately due to an increase in daily coronavirus infections, on Thursday 5 November 2020 The Health Protection (Coronavirus, Restrictions) (England) (No 4) Regulations 2020 came into force, and premises in which food and drink are sold for consumption on the premises were again required to close (although they can sell food and drink for consumption off the premises). Again the relevant businesses were listed within the regulations and these include restaurants, cafes, bars and public houses.

In respect of both occasions when specified premises were required to close, if a pub opened for the consumption of food or drink on the premises, in breach of the regulations, then the management of those premises would commit the common law offence of public nuisance. This carries a penalty of up to life imprisonment and so becomes a serious crime offence under the Regulation of Investigatory Powers Act 2000, thus fitting the legal obligations for a Section 53(a) Expedited Review.

Public nuisance is a common law offence. It has been defined as follows:

**A person is guilty of public nuisance (also known as common nuisance) who, (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects.**

**Mode of trial and sentence: 2.20 Public Nuisance is triable either way: that is to say, either in the Crown Court or in a Magistrates' Court. As in all common law offences where statute does not provide to the contrary, when it is tried in the Crown Court there is an unlimited power of imprisonment.**

The circumstances outlined below show that Mr Lang, the Premises Licence Holder and DPS of The Sports, is seriously undermining the Licensing Objectives of

Prevention of Crime and Disorder and Public Nuisance. The serious crime that this application refers to is in relation to the premises, continuing to open, albeit behind closed doors, to the public by allowing persons to attend and consume alcohol on the premises. This facilitates gatherings of people not from the same household in one place, putting the public at risk of contracting the virus and subsequently passing it on to others.

This is a direct breach of the Coronavirus Health Protection Regulations 2020 and creates a risk to public health, which is a common law offence of public nuisance, and as such is a serious crime.

For information, Sporty's does not have a kitchen and therefore is not able to provide food for consumption on or off the premises.

### Summary of Events

On 19 April 2020 a complaint was received from a member of the public that several people were regularly visiting the premises, believed for the consumption of alcohol therein and to play pool.

On 21 April 2020 officers attended the rear entrance of the premises. Inside they located the DPS, Mr Lang, and a friend who were playing pool and music in the pub. Officers noted that the DPS smelt of alcohol and glasses of beer and wine were seen on the bar. The DPS stated that he had been having his friends over to play pool and he further stated that he had played over 600 games with his friends, who had come over 3-4 times a week, throughout the period the premises had been required to close.

Officers gave him advice on this matter and he stated that he thought it was acceptable as some or most of his friends live alone. He was again advised against this and was given strong advice to stop this behaviour immediately.

Whilst at the premises officers noticed a smell of cannabis which they state was coming from inside the premises.

As a result of this incident, Police Licensing Officer, Mrs Smart, wrote to Mr Lang and hand delivered the letter to the premises on Thursday 23 April 2020. A copy of that letter is attached for information.

At 1800 hrs on 4 July 2020 officers attended the premises and noted that loud music was playing, which was immediately turned down when they entered. Officers commented that the music was so loud that people would have to raise their voices in order to be heard. Officers also noticed several customers were sat at the bar and about 10 people were stood around playing pool. The officers gave advice to Mr Lang concerning what they had witnessed.

On 2130 hrs on 4 July 2020 Mrs Smart attended Sporty's in the company of Mr Karl Martin, Public Protection Officer of Torbay Council, and police officers. On entering it was noted that there about 4 customers stood at the bar. Mr Lang produced a Covid risk assessment and this was viewed by Mrs Smart. Mrs Smart noted a



comment on the form stating "One in one out" in relation to the toilets, and she asked Mr Lang how this was managed. He explained that one person could go in when one came out but he could not provide any further information as to how he controlled this. Mrs Smart noted that the assessment referred to 'Enhanced Cleaning' and asked what this entailed. Mr Lang said that 2 people had been sick in the toilets during the afternoon so he had cleaned that up. He was asked why 2 people had been sick and he replied that they must have ate something dodgy. Mrs Smart asked him when the bar had last been cleaned but he did not respond. Mrs Smart pointed out that the bar was extremely wet all the way along and therefore it had not been cleaned for some time and probably had lots of handprints on too. Mrs Smart asked to see Track and Trace records but Mr Lang said that he thought he didn't need to keep details as he knows all his customers by name and has their telephone numbers. Mrs Smart will state that she formed the opinion that the risk assessment was a paper exercise and that few, if any, of the measures that had been written in the assessment were being managed by Mr Lang and his staff.

Whilst Mrs Smart was talking to Mr Lang, Mr Martin noted that the volume of music was very loud, Mrs Smart and himself were struggling to hear what Mr Lang said and the volume was too loud to be classed as background music. He asked Mr Lang to turn the volume of music down.

During Mrs Smart's discussions with Mr Lang she noted that he appeared to be under the influence of alcohol and asked him how much he had drunk. He said he had probably had a bottle of wine. At one point he said he didn't know anyone who had had coronavirus and no one had died of it within Torbay. Mr Martin advised Mr Lang that as Mr Lang was talking he could see spit coming out of his mouth and this demonstrated why social distancing is important to stop the spread.

Mrs Smart told Mr Lang that apart from one bottle of hand sanitiser, it was apparent that the premises were operating exactly the same as usual and that this was not acceptable. As Mr Lang was clearly under the influence of alcohol she arranged to meet him at the premises at 10.00 am on Monday 6 July 2020.

At 10.00 am on Monday 6 July 2020 Mrs Smart attended the premises with Sgt Dave Curtis, Licensing Sergeant for Devon. At that time Mr Lang told Mrs Smart and Sgt Curtis that he had decided to close for at least a couple of weeks as he did not think that he could manage his customers to ensure they sit down and comply with the requirements. Mr Lang said that he would contact Mrs Smart prior to re-opening in order that they could meet and Mrs Smart told him that she would help him with his risk assessment and measures that he needed to introduce.

Several weeks later Mrs Smart noticed that the premises were open, despite Mr Lang not having contacted her to discuss the re-opening of his premises.

Between 4 July 2020 and 13 August 2020 Mrs Smart received several complaints in relation to Sporty's. These relate to noise nuisance and drug issues.

On 23 September 2020 Mrs Smart, Sgt Curtis and Mr Martin attended the premises and met with Mr Lang. Discussions took place concerning complaints received from a local resident and a full inspection of the premises was carried out. It was

apparent that several conditions contained within the premises licence were not being complied with, and therefore Sgt Curtis issued a Closure Notice under Section 19 of the Criminal Justice and Police Act 2001. At the conclusion of this meeting Mr Lang was warned that due to the number of complaints the police had received and the fact that in the past it does not appear that he had heeded advice given to him, if further complaints or the measures outlined in the closure notice were not complied with, the police will seek a review of the licence. Further details in relation to this visit, and other concerns in respect of this premises, will be disclosed prior to the date of the full Review hearing.

At 1352 hrs on Thursday 11 November 2020 Mrs Smart received an email from a member of the public who advised her that 4 people had just been seen entering the rear of the premises.

This information was passed to the Neighbourhood Policing Team and two officers subsequently attended the premises at approximately 1530 hrs. They approached via the rear entrance and through the Upvc door they could see the outline of people within, they could hear music and also heard several voices. Upon knocking on the door Mr Lang said "Hold on lads" and went further into the building before then returning about 5-6 seconds later to open the door. In that timescale the voices and music stopped. Upon entering the premises, Mr Lang was alone in the bar next to the pool table. 5 glasses, some of which appeared to contain alcohol, were seen in various locations within the premises. Officers state that Mr Lang very quickly realised why they were there and made an excuse that he was just having a few drinks with one other person as it was Remembrance Day. PC Abercrombie asked Mr Lang where everyone had gone and stated he heard several voices from outside. Mr Lang allowed officers to check the toilets and other spaces in the bar area but no other persons were found.

Mr Lang then allowed PC Thomas to go upstairs to his living area where the officer was met by a male who stated he was Mr Lang's friend. This male provided the officer with his name, address and telephone number. This male does not live at the pub or Mr Lang's flat. The male was in drink and PC Thomas states he too realised why the officers were present.

PC Thomas then went into the living area and sitting on the sofa was a further male. This male explained to the officer that he was having a bad time with his life and asked him not to blame Jim for having him in the pub.

One of the males then went downstairs and spoke to PC Abercrombie, who took his details. This male does not live at the pub or Mr Lang's flat. During discussions this male stated that he and Mr Lang had gone to the cenotaph and had returned to the pub to drink and play pool.

PC Thomas, Mr Lang and the other male returned to the bar and that male then left the premises.

Mr Lang and the other male then had discussions with the officers concerning Covid19 within the bar area and during this time the male lit a cigarette and smoked it, flicking ash in an ashtray positioned on a side table. During these discussions


both the male and Mr Lang picked up what appeared to be alcoholic drinks and consumed these in front of the officers.

Mr Lang told officers that his friends weren't there for very long but that they had been playing games of pool and that it was first to 11.....and he was 10-1 up!

The officers gave strong words of advice to all persons and advised Mr Lang that they would be advising Mrs Smart of this matter.

As a result of this incident, Mr Lang has been issued a fixed penalty ticket for £1,000 by Torbay Council.

**Any other information:**

Signature of applicant:	
Date:	30/11/20
Capacity:	Superintendent, South Devon FCU.

**Contact details for matters concerning this application:**

Address: Licensing Officer Julie Smart, Torquay Police Station, South Street, Torquay, TQ2 5AH

Telephone number(s): 07921 933974

Email: [julie.smart@devonandcornwall.pnn.police.uk](mailto:julie.smart@devonandcornwall.pnn.police.uk)

**Notes for guidance:**

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of twenty- one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.

## Witness Statement

Criminal Procedure Rules, r 16.2; Criminal Justice Act 1967, s. 9

URN:

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Statement of: **Trevor THOMAS**Age if under 18 (if over insert "over 18"): **Over 18**Occupation: **Police Constable 15488**

This statement (consisting of .....2..... Pages(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: **Trevor Thomas**Date: **21/11/2020**

I am P C 5488 Thomas of the Devon and Cornwall Police, presently stationed in Torquay.

At approximately 1543 hours on Wednesday 11<sup>th</sup> November 2020, myself and P C 17181 Abercrombie arrived in Church Lane Torquay in order to check on a possible Covid 19 Breach at Sportys bar, the entrance to which is on Belgrave Road Torquay.

We went to the rear of Sportys, and gained entry through the rear gated and approached the back door. I could hear music coming from inside and could see people moving about inside through the frosted glass. P C Abercrombie knocked on the door and a male in a white shirt went to open the door by placing his hand on the handle but then walked back from the door and out of sight. Approximately 10 seconds later he returned and opened the door.

Upon entry P C Abercrombie asked if the male was "alright" and then said "WHERE'S EVERYONE HIDING ?"

The male, whom I now know to be called Jim LANG, said that there was only him and one other there, a male called [REDACTED] and that he was upstairs.

I asked LANG if he was the licensee and he replied "YES".

I asked if we could search the premises and LANG agreed. I checked the toilets and the remainder of the bar area but no one else was there.

LANG then allowed me to follow him upstairs. As we walked up the stairs LANG said "[REDACTED], COME DOWN HERE."

As I got to the top of the stairs, I was met by a male whom I now know to be called [REDACTED] born [REDACTED]. I then followed LANG into his lounge where, sitting on the sofa, was another male, called [REDACTED] born [REDACTED].

I asked Lang who he was and he said "THAT'S [REDACTED]". After a brief conversation, LANG said "IM IN TROUBLE NOW." At was at this time I could tell that LANG was in drink as his speak was slurred and laboured.

I then searched the rest of the building, but didn't find anyone else.

Signature: **Trevor Thomas**Signature Witnessed by: **N/A**

## Witness Statement

Continuation of Statement of Trevor THOMAS

We then went back into the lounge area where , in conversation, Lang admitted that he had been stupid and that "WE HAVE BEEN THIS ROAD BEFORE." He then said that there were no case in the South West!

I then took [REDACTED] details, and the 3 of us went back down to the bar area.

I had a brief conversation with him whereby he tried to justify why he was present. We both then walked back towards to where P C Abercombie, Lang and [REDACTED] were standing, next to the pool table in the rear of the bar.

We then had a conversation with [REDACTED] and Lang-[REDACTED] too was heavily in drink and I could see empty glasses on the bar. Both [REDACTED] and Lang consumed alcohol from glasses in our presence.

Lang continued to try and justify what he had done and that, as far as he is concerned, Covid 19 doesn't exist, as he doesn't know anyone who has had it. I pointed out that it was a very naïve thing to say. I then asked him how old he was-he replied "59". I then said "WELL IF YOU GET IT, COS YOURE A SIMILAR AGE TO ME." He then interrupted and said "I ALREADY HAVE." "I GOT IT AT THE BEGINNING." I asked if he had been tested and he said no.I asked "HOW DO YOU KNOW YOU HAD IT THEN?" He replied "ITS SOMETHING I NEVER HAD BEEN BEFORE AND A WEEK LATER I WAS ALRIGHT." At this time, [REDACTED] was finishing his pint in the background, and also smoking a cigarette- Lang didn't ask him to extinguish his cigarette.

[REDACTED] and Lang then continued to argue that they believed that no one has died due to Covid-19.

We told Lang and [REDACTED] that we had to leave and we exited at 1600 hours.

The whole incident was captured on my Body Worn Video camera.

This is the second time that I have been present in LANGS company within Sportys where not only has he not complied with the Covid Guidelines, but has argued that Covid 19 does not exist.

Signature: Trevor ThomasSignature Witnessed by: N/A