



Wednesday, 8 April 2015

LICENSING SUB-COMMITTEE

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

Thursday, 16 April 2015

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 Addis
Councillor Brooksbank

Councillor Doggett

Working for a healthy, prosperous and happy Bay

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

Kay Heywood, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207026

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. **Minutes** (Pages 1 - 2)
To confirm as a correct record the Minutes of the meeting of a Sub-Committee held on 26 March 2015.
4. **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.)
5. **Urgent items**
To consider any other items that the Chairman decides are urgent.
6. **Licensing Act 2003 – An application for a Premises Licence in respect of The Cliff Railway Café, 10 Babbacombe Downs Road, Torquay TQ1 3LF** (Pages 3 - 20)
To consider an application for a Premises Licence in respect of The Cliff Railway Café, 10 Babbacombe Downs Road, Torquay TQ1 3LF.



Minutes of the Licensing Sub-Committee

26 March 2015

-: Present :-

Councillors Addis, Stocks and Excell (In place of Bent)

41. Election of Chairman/woman

Councillor Addis was elected as Chairman for the meeting.

42. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillor Excell instead of Councillor Bent.

43. Minutes

The Minutes of the meeting of the Sub-Committee held on 12 March 2015 were confirmed as a correct record and signed by the Chairman.

44. Exclusion of the Press and Public

Prior to consideration of the item in Minute 45 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended.)

45. Taxi Driver Report

Members considered an exempt report concerning a Torbay Council Licensed Driver and whether he remained a 'fit and proper person' to hold a Torbay Council Driver's Licence. At the hearing Members of the Licensing Sub-Committee heard submissions from the Environmental Health Manager (Commercial).

Decision:

That the Respondent's Torbay Council Driver's Licence be revoked in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provision Act 1976 and that this revocation shall have immediate effect, in accordance with Section 61(2B) of the Local Government (Miscellaneous) Provision Act 1976.

Reason for Decision:

Having carefully considered all the written and oral representations, Members resolved to revoke the Respondent's Driver's Licence, as they could not be satisfied that he remained a 'fit and proper' person to hold such a licence.

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the driver's licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care or any vulnerable person known to them to get into a vehicle with the Respondent alone. An unequivocal and unanimous answer to this question, was 'no'.

This answer was formed considering their duty to protect the public, in the knowledge that a licensed driver is in a position of trust and on the evidence before them; the Respondent appeared to them to have conducted himself in a manner that was unacceptable and fell well below the standard expected by them of a driver licensed by Torbay Council.

In addition Members noted that the Respondent had not contacted Torbay Council's Licensing Department, despite the efforts of its Officers. Nor had he attended the hearing to give an account of the allegations. In light of this, Members resolved that they had no option at this stage other than to revoke the Respondent's drivers licence to ensure that members of the public were not put at risk. Consideration was given to a warning or suspension but Members resolved the allegations were too serious in their nature for this outcome.

In coming to the decision to revoke the Respondent's driver's licence, Members resolved that it should be with immediate effect, as it is in the interest of the public safety to do so. Members' reasoning for this determination is due to the serious nature of the allegations, some of which were witnessed by and directed at the Police, as well as the potential risk to public safety which they believe on the evidence before them that the Respondent poses, should he continue to hold a drivers licence granted by Torbay Council.

Chairman/woman



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

Title: Licensing Act 2003 – An application for a Premises Licence in respect of The Cliff Railway Café, 10 Babbacombe Downs Road, Torquay TQ1 3LF

Wards Affected: **St Marychurch**

To: **Licensing Sub Committee** **16th April 2015**

Contact Officer: **Mandy Guy**
☎ Telephone: **01803 208124**
✉ 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”, “The Prevention of Public Nuisance” and “The Protection of Children from Harm”.
- 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 Sale of Alcohol (on the Premises) from 09:00 until 23:00 7 days a week.

To be open to the public from 09:00 until 23:00 7 days a week.

A copy of the plan of the Premises is shown as Appendix 2.

- 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 relevant Representations have been received. The Licensing Authority is also satisfied that the Representations have been received within the appropriate time scale, have not been subsequently withdrawn and are not vexatious or frivolous.

We have received a representation from the Police in relation to the Licensing Objective "The Prevention of Crime and Disorder". This is shown as Appendix 3.

We have received a representation from Public Protection in relation to the Licensing Objective "The Prevention of Public Nuisance". This is shown as Appendix 4.

We have received a representation from Child Protection in relation to the Licensing Objective "The Protection of Children from Harm". This is shown as Appendix 5.

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

Frances Hughes
Executive Head Community Safety

Appendices

- Appendix 1 Details of the application.
- Appendix 2 Plan of Premises.
- Appendix 3 Representation from the Police.
- Appendix 4 Representation from Public Protection.
- Appendix 5 Representation from Child Protection.

Documents available in Members' rooms

None

Background Papers:

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

Torbay Council Licensing Policy 2011.



Application for a premises licence to be granted under the Licensing Act 2003

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 this 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.

You may wish to keep a copy of the completed form for your records.

I/We YELLANDS LTD
(Insert name(s) of applicant)

apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 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

Part 1 – Premises Details

Postal address of premises or, if none, Ordnance Survey map reference or description <u>THE CLIFF RAILWAY CARE</u> <u>10 BARRADINE DOWN ROAD</u>			
Post town	<u>TORQUAY</u>	Postcode	<u>TQ1 3LF</u>
Telephone number at premises (if any)	<u>01803 611412</u>		
Non-domestic rateable value of premises	<u>£6800.00</u>		

Part 2 - Applicant Details

Please state whether you are applying for a premises licence as
 Please tick as appropriate

- a) an individual or individuals * please complete section (A)
- b) a person other than an individual *
 - i. as a limited company please complete section (B)
 - ii. as a partnership please complete section (B)
 - iii. as an unincorporated association or please complete section (B)
 - iv. other (for example a statutory corporation) please complete section (B)
- c) a recognised club please complete section (B)
- d) a charity please complete section (B)

Part 3 Operating Schedule

When do you want the premises licence to start?

DD	MM	YYYY
2	5	03 2015

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

DD	MM	YYYY

Please give a general description of the premises (please read guidance note 1)

CAFE WITH INTERNAL / EXTERNAL SEATING
ON PRIVATE LAND.

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

—

What licensable activities do you intend to carry on from the premises?

(Please see sections 1 and 14 of the Licensing Act 2003 and Schedules 1 and 2 to the Licensing Act 2003)

Provision of regulated entertainment

Please tick any that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

Provision of late night refreshment (if ticking yes, fill in box I)

Supply of alcohol (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 6)			Will the performance of a play take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 3)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for performing plays (please read guidance note 4)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat					
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 6)			Will the supply of alcohol be for consumption – please tick (please read guidance note 7)	On the premises	<input checked="" type="checkbox"/>
				Off the premises	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	State any seasonal variations for the supply of alcohol (please read guidance note 4)		
Mon	9am	11pm			
	0900	2300			
Tue	9am	11pm			
	0900	2300			
Wed	9am	11pm			
	0900	2300			
Thur	9am	11pm			
	0900	2300			
Fri	9am	11pm			
	0900	2300			
Sat	9am	11pm			
	0900	2300			
Sun	9am	11pm			
	0900	2300			
			Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 5)		

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

Name	AMANDA JANE YELAND (nee FITTON)
Address	17 ST MATTHEWS ROAD TORQUAY
Postcode	TQ2 6JA
Personal licence number (if known)	PA2098
Issuing licensing authority (if known)	TORBAY

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 8).

NONE

L

Hours premises are open to the public
Standard days and timings (please read guidance note 6)

State any seasonal variations (please read guidance note 4)

Day	Start	Finish
Mon	0900	2300
Tue	0900	2300
Wed	0900	2300
Thur	0900	2300
Fri	0900	2300
Sat	0900	2300
Sun	0900	2300

Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 5)

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

a) General - all four licensing objectives (b, c, d and e) (please read guidance note 9)

Our intention is to offer 'continental cafe style' drinking options. No special offers, seated drinking only.

b) The prevention of crime and disorder

Full Colour Digital CCTV is already in place and covers both inside and outside.
Train Staff on 'Challenge 25'.
Liaise with community police.

c) Public safety

Staff training
1st Aid kit available.

d) The prevention of public nuisance

We will not be attracting heavy drinkers and we will require that persons are seated when consuming alcohol. Our outside terrace is also completely non smoking as the cafe attracts most families.

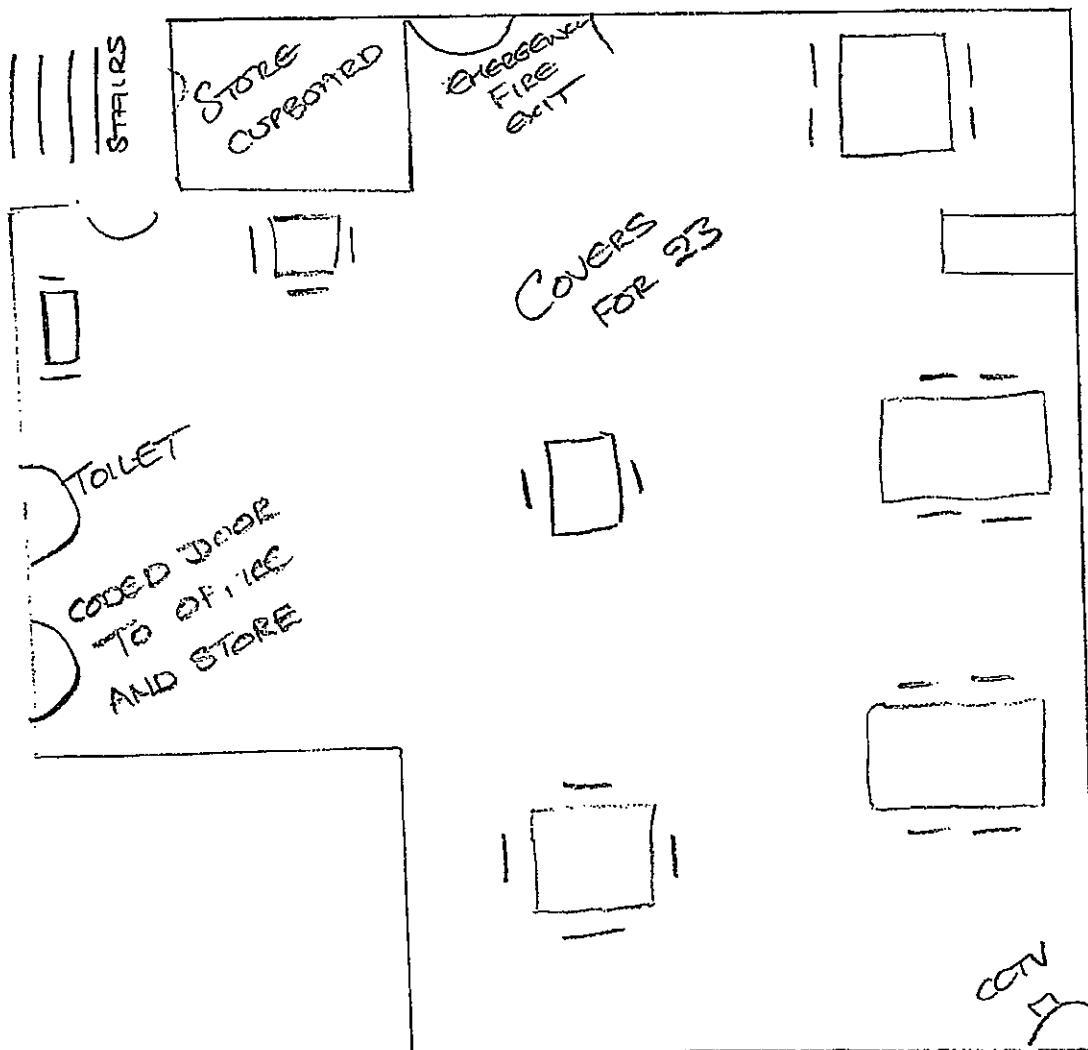
e) The protection of children from harm

As mentioned - seated drinking - non smoking
staff training - no cheap drinks
we want to encourage responsible drinking and
to get root from an

Agenda Item 6

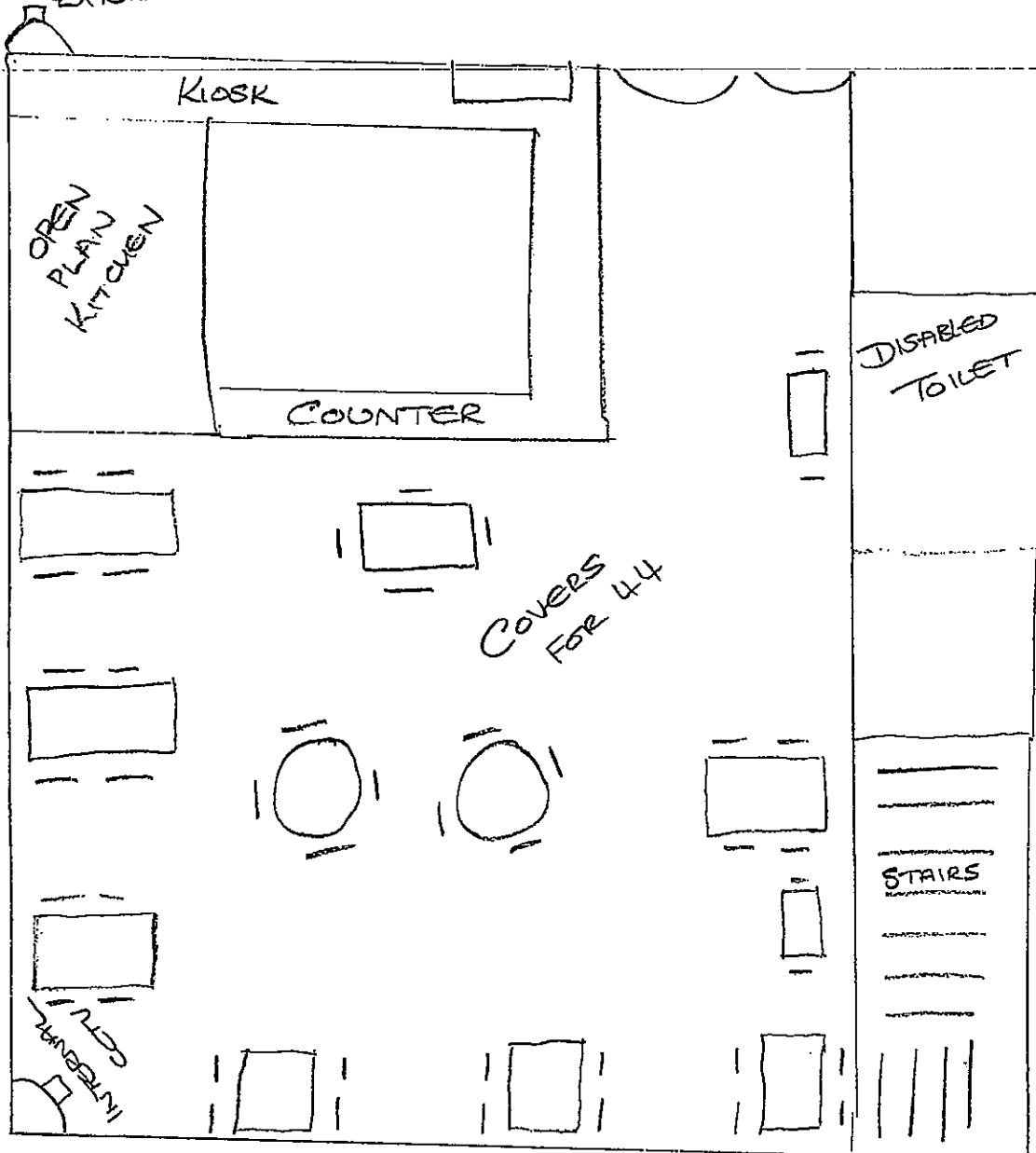
Appendix 2

LOWER GROUND FLOOR



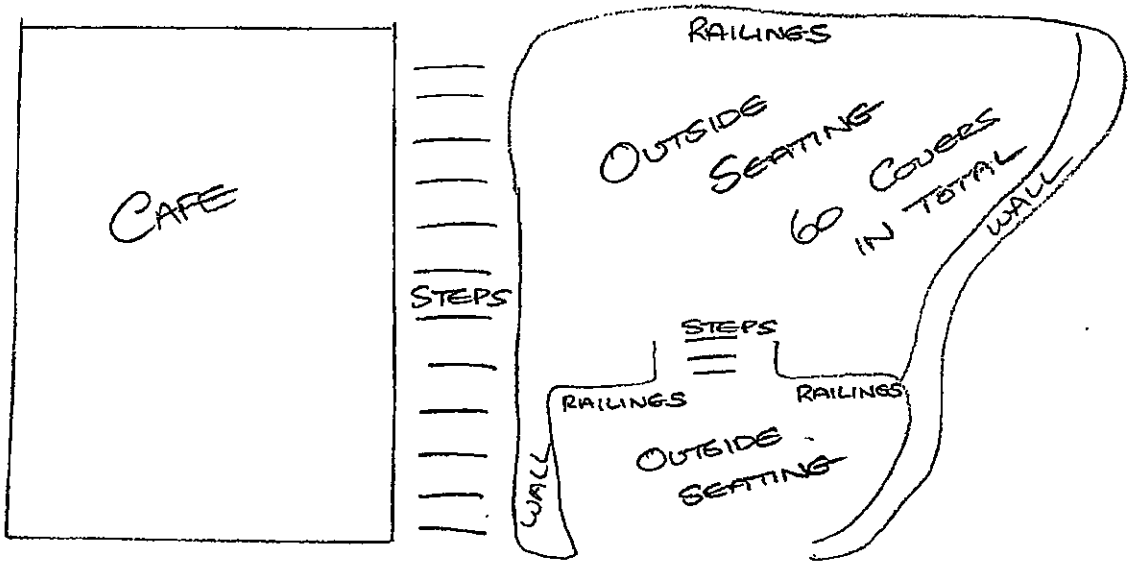
EXTERNAL CCTV

GROUND FLOOR - FLOOR PLAN





OUTSIDE SEATING





Devon & Cornwall Police
Building safer communities together

Licensing Team
Torbay Council
C/O Torquay Town Hall
Castle Circus
TORQUAY
TQ1 3DR

Licensing Department East
Devon and Cornwall Constabulary
Force Headquarters
EXETER
EX2 7HQ

Telephone: 01803 218900

12 March 2015

Dear Sir/Madam
The Cliff Railway Cafe, 10 Babbacombe Downs Road, Torquay

I refer to an application for the Grant of a Premises Licence in respect of the above named premises, submitted by the applicant, Yellands Ltd.

My Police Licensing Officer, Mrs Julie Smart, has visited the premises and discussed the application with Mr Yelland. As a result of those discussions, the police request that the below conditions are imposed on the licence:

1. A CCTV system shall be installed at the premises to the satisfaction of the police, and must operate at all times the premises are open to the public. All recordings must be kept for a minimum of 14 days, during which time the police shall have access and be provided with downloaded images at any reasonable time. The existing external camera covering the outside seating area shall be re-located to such a position to afford good supervision of this area at all times, particularly when parasols are in use.
2. Food shall be available at all times the premises are open to the public.
3. The consumption of alcohol shall be restricted to persons who are seated at tables.
4. The outside seating area shall be regularly monitored by waiting staff, who will ensure that customers remain seated at all times, that items of crockery, glasses and bottles are not taken outside the area and that tables are cleared as soon as possible.
5. Notices shall be displayed within the outside seating area advising customers to remain seated whilst eating and drinking.

licensingeast@devonandcornwall.pnn.police.uk

6. Notices shall be displayed within the outside seating area advising customers not to take glasses/bottles out of the area.
7. The premises shall operate a Challenge 25 Policy whereby any person who appears under the age of 25 will be required to produce an approved form of identification.
8. All staff shall receiving training in relation to their responsibilities with regards to the Licensing Act, in particular regarding drunkenness, drugs and underage issues. The management will also provide regular refresher training to all staff.

For your information, Mr Yelland has indicated that these conditions are acceptable to him.

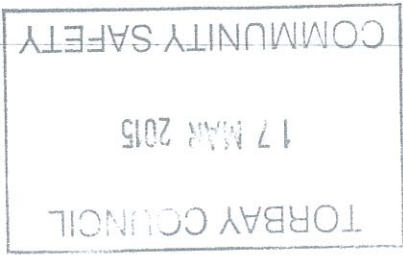
Should you require any further information, please do not hesitate to contact Julie Smart on 01803 218900.

Yours faithfully

A handwritten signature in black ink, appearing to be 'G Mayhew', written over a horizontal line.

Superintendent G Mayhew
LPA Commander

Memorandum

<p>To: </p> <p>c.c.</p> <p>c.c.</p> <p>c.c.</p> <p>For the attention of: Mandy Guy</p>	<p>From : Community Safety</p> <p>Contact : Mr Karl Martin</p> <p>Ext : 01803 208025</p> <p>My Ref : 1ZV SRU No: 214853</p> <p>Your Ref :</p> <p>Date : 16TH March 2015</p>
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Subject: Premises– Licensing Act 2003

Premises Name & Address: Babbcombe cliff railway cafe, Babbacombe Downs Road, Torquay, Devon, TQ1 3LF

- a) I have no comments to make on the above application

- b) The application does not meet the following licensing objectives:
 - i) Prevention of crime and disorder
 - ii) Protection of children from harm
 - iii) Public safety
 - iv) Prevention of public nuisance

- 1. I wish to object to the above named application as I do not believe the application promotes the licensing objective 'Prevention of Public Nuisance'.
- 2. The department has not to date received any noise complaints about this premises. In 2006 three separate Temporary Event notices (TENS) authorising the sale of alcohol were applied for and granted which did not give rise to complaints.
- 3. The applicant only wishes to seek the sale of alcohol on the premises. No regulated entertainment has been applied for. The premises wishes to close at 11:00pm and therefore will benefit from the deregulation of live music under the Live Music Act 2012. Consequently live music has not been considered as part of this representation.
- 4. The applicant is seeking to incorporate an outside terrace garden for consumption of alcohol as part of the licensed area.
- 5. Outdoor areas are a frequent source of complaints from residents and business of Torbay and therefore any applicant must consider careful how outside areas will be managed. The applicant has not fully considered in the operating schedule how the usage of an outdoor terrace area will impact on the local noise environment.

Recommendations

6. I respectfully request the Licensing Sub-Committee give their due consideration to the attachment of the following conditions which will ensure the licensing objective 'The prevention of Public Nuisance' is upheld:-
- a. *There should be a prominent, clear and legible notice displayed within the terrace area stating that patrons are required to respect neighbours by keeping noise to a minimum.*
 - b. *Patrons of the premises must be reminded by staff to leave in a quiet and orderly manner so as not to unreasonably disturb nearby residents and a prominent notice shall be displayed to this effect at the exit.*
 - c. *All patrons must be seated when using the licensed terrace area as shown on the premises plan.*
 - d. *Service of alcohol must be by waiter / waitress service only and alcohol may only be purchased for consumption on the premises when ordering a table meal.*
 - e. *The placing of refuse, such as bottles, into receptacles outside the premises must take place between 8am and 9pm to prevent disturbance to nearby properties.*
 - f. *The designated smoking area must be monitored by staff to ensure that patrons do not unreasonably disturb nearby residents.*

Please note the applicant suggests in the operating schedule that patrons whom wish to smoke will not be allowed to use the licensed terrace. Therefore condition (f) aims to address smokers using the public highway to prevent public nuisance. This is only an assumption as the applicant has not identified on the premises where smokers will be allowed to smoke.

Mr Karl Martin
Public Protection Officer

Appendices

1. Appendix 1.0 – Street view of Cliff railway café.



Appendix 1.1 – Aerial view of Cliff railway café.



Memorandum

To: Licensing Team	From	: Safeguarding and Reviewing Service
c.c.	Contact	: Lisa Jennings
c.c.	Ext	: 208687
c.c.	My Ref	:
For the attention of: Licensing	Your Ref	:
	Date	: 24 th February 2014

Subject: Application for: New Premises Licence

Premises Name and Address: Cliff Railway Cafe, 10 Babbacombe Downs Road, Torquay, TQ1 3LF

- a) I have no comments to make on the above application
- b) The application does not meet the following licensing objectives:
-
- i) Prevention of crime and disorder
- ii) Protection of children from harm
- iii) Public safety
- iv) Prevention of nuisance

because:- (please list those aspects of the application or variation that give you reason for concern and why you have these concerns).

The application lacks suitable conditions to protect children from harm. In order to ensure the safety of children I would like to see the following conditions included:
:

- The premises shall operate a challenge 25 scheme.
- No under 18's shall be permitted on the premises after 21:00 hrs unless accompanied by a responsible adult who is taking a table meal.
- An exception to under 18's being permitted on the premises after 21:00 hrs shall be to attend a pre-arranged private function in the company of a responsible adult and where the premises are closed to the public.

I have spoken to the applicant who has confirmed that the company would be happy to include the above conditions on their licence.

Signed:



Date: 24.02.2015