



Minutes of the Licensing Sub-Committee

6 November 2014

-: Present :-

Councillors Addis, Ellery and Bent

16. Election of Chairman/woman

Councillor Addis was elected as Chairman for the meeting.

17. Apologies

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

18. Minutes

The Minutes of the meeting of the Sub-Committee held on 11 September 2014 were confirmed as a correct record and signed by the Chairman.

19. Licensing Act 2003 – An application for a Review of a Premises Licence for Rock Garden, 40-44 Swan Street, Torquay TQ2 5EZ

Members considered a report on an application for a Review of a Premises Licence for Rock Garden, 40-44 Swan Street, Torquay TQ2 5EZ.

Members noted that the application had been properly made and that the Applicants are Interested Parties and that the administrative requirements of Section 51 (3)(a) and (b) had been met and that the Representation had not been subsequently withdrawn and was not vexatious, frivolous or repetitious.

The Premises do fall within the Cumulative Impact Area.

Written Representations received from:

Name	Details	Date of Representation
The Applicant	Application for a Review in relation to the Licensing Objective 'The Prevention of Public Nuisance' and a log of complaints.	15 September 2014
Public Protection	Representation in relation to the Licensing Objective 'The Prevention of Public Nuisance' and a chronology of noise complaints and interventions.	10 October 2014
Interested Party	Representation in relation to the Licensing Objective 'The Prevention of Public Nuisance.'	10 October 2014
Solicitor on behalf of Licence Holder	Statement from Premises Licence Holder	9 October 2014
The Police	Statement from Devon & Cornwall Police.	1 October 2014
Future Technical Solutions Limited	Witness Statement submitted by Respondent	Circulated as late paper 3 November 2014

Members noted that there had been no additional Representations received from any other Responsible Authority or any other Interested Party and that although the Police had considered the application and had made a Statement, they were satisfied that the Premises currently met the Licensing Objectives 'The Prevention of Crime and Disorder,' 'The Protection of Children from Harm' and 'The Promotion of Public Safety' and therefore did not make a Representation.

The Senior Solicitor for the Local Authority informed the Respondent, Applicant, Responsible Authority and Interested Party that Members had attended a site visit at the premise on the 5th November 2014 to familiarise themselves with the layout. During that visit, Members did not engage in any communication with any one other the Local Authority's Senior Solicitor who was also present.

The Senior Licensing Officer advised Members that a DVD of video footage and photographs were submitted with the Review Application. Copies of colour photographs which had appeared in black and white in the submitted report were circulated and Members viewed excerpts of the video footage.

Request to extend the time for Oral Representations:

The Chairman agreed to the request from the Applicant and Public Protection to allow 20 minutes for Oral Representations. In doing so, each party were advised that they also will be permitted 20 minutes should they chose to require this time.

Oral Representation received from:

Name	Details
The Applicant	The Applicant outlined the case, as set out in their submitted documents and responded to Members questions.
Public Protection	The Public Protection Officer outlined their Representation, as set out in the submitted documents, responded to Members questions.
Interested Party	An Interested Party outlined their Representation, as set out in the submitted documents and responded to Members questions.
The Respondent's Legal Representative	The Respondent's Legal Representative outlined their case, responded to the submissions made by each Party and responded to Members questions.

The Applicant advised Members of the reasons for calling for a Review of the Premise Licence

Respondent's response to Representation:

The Respondent's Legal Advisor advised Members that the Premise Licence Holder had worked with the Council's Public Protection Officers in an attempt to address the issues and engaged the services of a sound expert. Remedial works had been undertaken, some untested, which had proved to be unsuccessful. That there was no known immediate solution and any further measures would be untested at great time and expense to his client.

The Respondent's Legal Advisor further advised Members that a Condition should be imposed for the Beer Garden to close at 9.30pm.

Decision:

Following the application for a Review of a Premises Licence, in respect of Rock Garden, 40-44 Swan Street, Torquay TQ2 5EZ, Members resolved to modify the conditions as follows:

1. The premises beer garden shall cease to be used by all persons at 9pm.
2. A Management scheme shall be in place to ensure that the beer garden is emptied of all persons and glasses by 9pm.
3. There should be a minimum of 5 prominent, clear and legible notices displayed within the beer garden stating that patrons are required to respect neighbours by keeping noise to a minimum and that any noisy or disorderly patrons will be asked to leave the beer garden.
4. A Management Scheme shall be in place to ensure compliance of that stated within the notices in the beer garden.
5. The fabric of the lobby at the entrance to the premise and the entrance to the beer garden must be of an acoustic material to reduce noise outbreak from the premise. The proposed material must be approved by Officers of the Council's Public Protection Team and works completed by the 6th January 2015.
6. A Management Scheme must be in place to ensure that both sets of the lobby doors are not open at the same time after 9pm.
7. After 9pm the designated smoking area shall be at the front of the premises. This area should be clearly defined as the designated area and the numbers of people using this area should be limited to 10 people.
8. A Management Scheme shall be in place to ensure that the maximum number of 10 people using the designated smoking area after 9pm shall be maintained at all times.

The following Conditions contained within Annex 3 under the heading 'The Prevention of Public Nuisance have been amended, as follows:

Condition 6 shall now read:

The placing of refuse, such as bottles, into receptacles outside the premises must take place between 9am and 9pm to prevent disturbance to nearby properties.

Condition 7 shall now read:

Deliveries of kegs, bottles, food or other materials necessary for the operation of the business must be carried out between 9am and 9pm and in such a manner as to prevent nuisance and disturbance to nearby residents.

Condition 8 shall now read:

To reduce noise breakout, doors and windows must be kept shut during the playing of amplified music. A Management Scheme shall be in place to ensure this situation remains.

Condition 15 shall now read:

The handling of beer kegs, bottles and other similar items must not take place between 9pm and 9am outside the building or in the beer garden.

Condition 16 shall now read:

Bottle skips and bins containing cans or bottles shall not be emptied outside after the premises closes but will be dealt with the next day between 9am and 9pm.

Condition 17 shall now read:

The movement of bins and rubbish outside the premises shall not take place between 9pm and 9am. This will help to reduce the levels of noise produced by the premises.

Reason for Decision:

Having carefully considered all the written and oral Representations, Members found on the evidence before them that noise outbreak was emanating from this premise so as to cause a public nuisance to nearby residents and in doing so, the licensing objective 'The Prevention of Public Nuisance' was being undermined.

In addition Members resolved that evidence contained within the CCTV footage shown to them at the hearing clearly showed that the Premises Licence Holders current operational use of the premises was breaching a number of conditions on the current premises licence. This they found to be concerning and unacceptable and not what they would expect of responsible premises licence holder.

Whilst Members noted the ongoing efforts made by the Premises Licence Holder and Designated Premises Supervisor to resolve the complaints and concerns of Interested Parties and the Responsible Authority, they concluded that there had been unacceptable levels of delay by the Premises Licence Holder to resolve the known issues whilst continuing to operate the premise in a way that was causing a public nuisance.

In support of their findings, Members were concerned to note that despite the ongoing engagement with the Local Authority's Licensing and Public Protection Officers, less than 2 months after the application for a review of the premises was submitted and prior to the hearing taking place, the Premises Licence Holder was served with a noise abatement notice on the 7 October 2014, in respect of voices from patrons using the beer garden at the premises.

In response to the submissions by the Respondent's Legal Representative that the premises is located in a vibrant area and within the town cumulative impact area so residents should expect some level of disturbance, Members found the Applicants and the Interested Party present at the hearing to be reasonable in their toleration of living in such an area and that the current level of noise coming from the premises beer garden, would and did as submitted by the residents, have a detrimental impact which is disproportionate and unacceptable.

Members in coming to their decision gave careful consideration to prohibiting the use of the beer garden altogether, having heard from both the Public Protection Officer present and the Respondent and his Legal Representative that there was no immediate solution to the noise break out, given the premises geographic location and fabric surroundings and that any future efforts were not guaranteed and would take time to explore and could be at a considerable cost.

However when examining and balancing the cause of concerns identified in the application and representations, the times where noise complaints were mostly identified, the premises need to survive as a viable business to that of the residents' right to peaceful enjoyment of their homes and the Council's Licensing Statement of Principles 2011, Members concluded to appropriately modify the current premises licence as set out in their decision, having in mind that the abatement notice would also act as a guard to protect nearby residential properties until such time that a measurable solution can be found.

20. Exclusion of the Press and Public

Upon advice from the Council's Senior Solicitor, prior to consideration of the item in Minute 22, Members resolved that it was in the public interest not to exclude the press and public from the meeting, as the information contained within the report had been reported by the local newspaper and therefore was already in the public domain. Some personal details were agreed to be redacted from the report.

21. Licensing Act 2003 – An application for a Variation to a Premises Licence to Specify an Individual as the Premises Supervisor of Preston Cue Club, 3 Manor Corner, Manor Road, Paignton TQ3 2JB

Members considered a report for an application for a Variation to a Premises Licence to specify an individual as the Premises Supervisor in respect of Preston Cue Club, 3 Manor Corner, Manor Road, Paignton TQ3 2JB.

Written Representations received from:

Name	Details	Date of Representation
The Police	Representation received in respect of the exceptional circumstances of the case that granting the application would undermine the Crime Prevention Objective.	9 October 2014

The Senior Licensing Officer advised Members that the Applicant had been informed that the Committee was taking place but had advised that the proposed Designated Premise Supervisor would be attending on their behalf.

Oral Representation received from:

Name	Details
The proposed Designated Premise Supervisor	The proposed Designated Premises Supervisor outlined the application, as set out in the submitted documents, explained to Members the personal reasons surrounding his conviction and his experience, and responded to Members questions.
The Police	The Police highlighted their concerns in respect of the application and responded to Members questions.

Additional Information:

The proposed Designated Premise Supervisor explained to Members the personal reasons surrounding his conviction.

Decision:

That the application for a Variation to a Premises Licence to specify an individual as the Premises Supervisor in respect of Preston Cue Club, 3 Manor Corner, Manor Road, Paignton TQ3 2JB be refused.

Reason for Decision:

Having carefully considered all the written and oral Representations, Members noted the mitigating circumstances around the conviction but resolved that the proposed Designated Premises Supervisor did not in their opinion display a responsible attitude to alcohol by driving a car when he was four times over the drink drive limit and as such, they could not be satisfied that he was a suitable person to be the Designated Premises Supervisor of a Licensed Premises.

Chairman/woman
