



Wednesday, 29 October 2014

## **LICENSING SUB-COMMITTEE**

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

**Thursday, 6 November 2014**

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 Ellery

Councillor Doggett

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**Working for a healthy, prosperous and happy Bay**

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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](mailto:governance.support@torbay.gov.uk)

[www.torbay.gov.uk](http://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 - 3)  
To confirm as a correct record the Minutes of the meeting of a Sub-Committee held on 11 September 2014.
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 Review of a Premises Licence for Rock Garden, 40-44 Swan Street, Torquay TQ2 5EZ** (Pages 4 - 78)  
To consider an application for a Review of a Premises Licence for Rock Garden, 40-44 Swan Street, Torquay TQ2 5EZ.
7. **Exclusion of the Press and Public**  
To consider passing a resolution to exclude the press and public from the meeting prior to consideration of the following item on the agenda on the grounds that exempt information (as defined in Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)) is likely to be disclosed.

**8. 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**

(To Follow)

To consider 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.



## Minutes of the Licensing Sub-Committee

11 September 2014

-: Present :-

Councillors Addis, Pentney and Brooksbank

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### 11. Election of Chairman/woman

Councillor Addis was elected as Chairman for the meeting.

### 12. Minutes

The Minutes of the meeting of the Sub-Committee held on 14 August 2014 were confirmed as a correct record and signed by the Chairman.

### 13. Licensing Act 2003 - An application for a Premises Licence in respect of Pelican Cafe, 61 Roundham Road, Paignton TQ4 6DS

Members considered a report on an application for a Premises Licence in respect of Pelican Cafe, 61 Roundham Road, Paignton TQ4 6DS.

Written Representations received from:

Name	Details	Date of Representation
Police	Representation in relation to Licensing Objective 'The Prevention of Crime and Disorder' and proposed conditions.	13 August 2014
Interested Party	Representation in relation to Licensing Objective 'The Prevention of Public Nuisance.'	18 August 2014

Members noted that there had been no additional Representations received from any other Responsible Authority or Interested Party.

Oral Representations received from:

Name	Details
Applicant	The Applicant outlined the application, as set out in the submitted documents and responded to Members questions.
Police	The Police outlined their objection, as set out in the submitted documents, outlined proposed conditions and responded to Members questions.

Members were advised by the Senior Licensing Officer that she had spoken with the Interested Party who had made the Representation and they had informed her that they would not be able to attend. Members agreed it was in the public interest to continue with the meeting.

### **Additional Information**

Members noted that the Police had proposed five conditions, as per Appendix 4 of the submitted report, and confirmed that these conditions had been agreed by the Applicant.

### **Decision:**

That the application for a Premises Licence in respect of Pelican Cafe, 61 Roundham Road, Paignton TQ4 6DS be granted as applied for, subject to the 5 conditions proposed by the Police and agreed by the Applicant being added and that the outside area of the premises shall cease to be used at 11pm.

### **Reason for Decision:**

Having carefully considered all the written and oral Representations, Members resolved to grant the licence as decided, having been satisfied that the imposition of the proposed and additional conditions would alleviate the concerns of the Interested Party and the Police and promote the Licensing Objectives.

## **14. Conviction of Torbay Council Licensed Driver of Fraud**

Members considered a report concerning a Torbay Council Licensed Driver and whether he remained a 'fit and proper person' to hold a Torbay Council Driver's Licence.

### **Decision:**

Members resolved to issue Mr Dawe-Smith with a warning in respect of the conviction and failure to notify the Local Authority of this conviction.

Reason for Decision:

Having carefully considered all the written and oral representations, Members are satisfied on the evidence before them that Mr Dawe-Smith does not pose a risk to Public Safety.

Whilst Members had regard to the seriousness of the offence and that contained within the Council's Policy, Members noted that Mr Dawe-Smith had been a driver licensed by Torbay Council for twelve and a half years and during that time, there were no issues of concern. This coupled by the absence of any risk, Members resolved that in keeping his licence, this will allow Mr Dawe-Smith to continue to make reparations to the public purse.

**15. Taxi Driver Report**

Members were advised by the Senior Licensing Officer that the Taxi Driver had surrendered the Torbay Council Taxi Driver's Licence and Badge on the 8 September 2014, therefore it was no longer necessary for the Sub-Committee to consider this matter.

The Chairman noted the Senior Licensing Officers submission and agreed that this was a matter which did not require any further consideration.

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Chairman/woman



Briefing Report  
No:

Public Agenda Item: **Yes**

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

Wards Affected: **Tormohun**

To: **Licensing Sub-Committee**

On: **6<sup>th</sup> November 2014**

Contact Officer: **Mandy Guy**  
Telephone: **01803 208025**  
E.mail: **Licensing@torbay.gov.uk**

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## 1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premise detailed above, for a Review of a Premises Licence. The Premises is situated in the Cumulative Impact Area.
- 1.2 The application relates to all the Corporate Priorities within the Community Plan.
- 1.3 The matters raised relate to the Licensing Objective “The Prevention of Public Nuisance”.
- 1.4 The Authority must hold a hearing to consider the application and any relevant Representations.

The Authority must, having regard to the application and any relevant Representations, take such of the steps as detailed below, if any, as it considers necessary for the promotion of the Licensing Objectives.

The steps are –

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the Designated Premises Supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose, the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

If the licence is subject to sections 19, 20 and 21 (requirement to include certain

conditions in Premises Licences) they remain.

Where the Authority takes a step to modify the conditions or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

- 1.6 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Interested Parties and Responsible Authorities at the determination of the matter.

## **2. Introduction**

- 2.1 An application has been made under Section 51 of the Act for a Review of the Premises Licence, at the Premise detailed above. Details of the application are shown in Appendix 1.

A brief description of the Review is as follows:

Mr Stuart Gibbons and Mr Daniel Burridge, both Interested parties, have sought a Review of the Premises Licence on the grounds relating to the Licensing Objective “The Prevention of Public Nuisance”.

A copy of the current Premises Licence is shown in Appendix 2.

- 2.2 Torbay Council as the Licensing Authority, is satisfied that the application has been properly made, that the Applicants are Interested Parties, and that the administrative requirements of Section 51(3)(a) and (b) have been met and that the Representation has not been subsequently withdrawn and is not vexatious, frivolous or repetitious.

We have received a Representation from Public Protection in relation to the Licensing Objective “The Prevention of Public Nuisance”. This is shown as Appendix 3.

We have received 1 Representation from an Interested Party in relation to the Licensing Objective “The Prevention of Public Nuisance”. This is shown as Appendix 4.

The Solicitor acting on behalf of the Licence Holder has submitted a representation in response to the Review. This is shown as Appendix 5.

The Police have considered the application and are satisfied that the Premises are currently meet the Licensing Objective “The Prevention of Crime and Disorder”, “The Protection of Children from Harm” and “The Promotion of Public Safety”. Therefore they are not making a representation in relation to this matter. However, they have provided a statement outlining historic concerns that they had and respectfully request that the Licensing Sub-Committee consider these and the remedial actions put in place to alleviate them when making their decision. This is shown as Appendix 6.

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

- 2.3 The Authority is required to conduct a hearing by the provisions of Section 52(2).



- 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 Representations and the procedure to be followed at the hearing.
- 2.5 Once the matter is determined, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 8(2) of Schedule 5 to :-
- (a) the Applicant for the Review,
  - (b) the holder of the Premises Licence, or
  - (c) any other person who made relevant Representations in relation to the application.

In the event that an Appeal is entered, the determination will not have affect until the Appeal is either determined or withdrawn.

- 2.6 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 an order as to costs as it thinks fit.

**Frances Hughes**  
**Executive Head Community Safety**

### **Appendices**

Appendix 1	Details of the application for Review
Appendix 2	A copy of the Premises Licence
Appendix 3	Representation from Public Protection
Appendix 4	Representation from an Interested Party
Appendix 5	Representation from Solicitor representing the Licence holder
Appendix 6	Representation from the Police

If the above appendices are not attached to this report, they can be viewed at Connections Offices in Torquay, Paignton and Brixham and Torquay, Paignton, Churston and Brixham Libraries. Copies can also be obtained from the Democratic Services Office, Town Hall, Torquay.

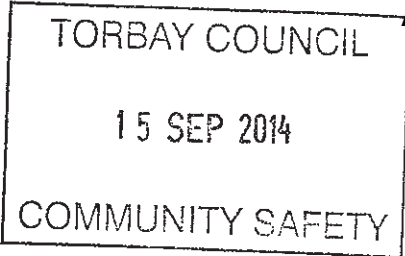
### **Documents available in members' rooms**

None

### **Background Papers:**

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





App 035333

**LICENSING ACT 2003**  
**APPLICATION**  
**FOR THE REVIEW OF A PREMISES LICENCE**  
**OR CLUB PREMISES CERTIFICATE**

**NOTIFICATION**

*Information held by Torbay Council complies with and is held in accordance with the UK Data Protection Act 1998. The information that you provide on this form will only be used for this application form and will only be disclosed where necessary under any applicable legislation.*

*Information may also be shared for the prevention and detection of crime, for example with the police and other agencies as required by law, such as the Audit Commission under the National Fraud Initiative data matching exercise.*

*You have a right of access to your personal information. If you wish to access your personal information or exercise any of your rights under the legislation then please contact Torbay Council's Information Governance team on 01803 20 7467. Further information can be found on the Information Governance pages on Torbay Council's Internet site at, [www.torbay.gov.uk](http://www.torbay.gov.uk)*

**Completed forms should be returned to:**

**Principal Safety & Licensing Officer**  
**Torbay Council**  
**Environmental Health and Community Safety**  
**Roebuck House**  
**Abbey Road**  
**Torquay**  
**TQ2 5EJ**

**Contact Details:**

**Tel: 01803 20 8126**

**Web: [www.torbay.gov.uk](http://www.torbay.gov.uk)**

**Fax: 01803 20 8854**

**Email:  
[licensing@torbay.gov.uk](mailto:licensing@torbay.gov.uk)**

**Application for the review of a Premises Licence or  
Club Premises Certificate 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 Stuart Gibbons & Daniel Burridge**

*(Insert name of applicant)*

**apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)**

**Part 1 – Premises or club premises details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b> Rock Garden 40-42 Swan Street	
<b>Torquay</b>	<b>TQ2 5ES</b>

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Halix Ltd The Royal Exeter Hotel, Exeter Road, Bournemouth, BH2 5AG
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<b>Number of premises licence or club premises certificate (if known)</b> PL0576
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**Part 2 - Applicant details**

I am

**Please tick yes**

- 1) an interested party (please complete (A) or (B) below)
  - a) a person living in the vicinity of the premises
  - b) a body representing persons living in the vicinity of the premises
  - c) a person involved in business in the vicinity of the premises
  - d) a body representing persons involved in business in the vicinity of the premises
  
- 2) a responsible authority (please complete (C) below)
  
- 3) a member of the club to which this application relates (please complete (A) below)

**(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)**

**Please tick**

Mr  Mrs  Miss  Ms  Other title   
(for example, Rev)

**Surname**

**Gibbons**

**First names**

**Stuart**

**Please tick yes**

I am 18 years old or over

**Current postal address if different from premises address**

Post town

Torquay

Post Code

TQ2 5SP

Daytime contact telephone number

01803 201401

E-mail address  
(optional)

steamerquay@gmail.com

**(B) DETAILS OF OTHER APPLICANT**

Daniel Burridge  
Flat 3 Steamer Quay  
Rock Road  
Torquay  
TQ2 5SP

Tel 01803201401

E-mail steamerquay@gmail.com

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**This application to review relates to the following licensing objective(s)**

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance ✓
- 4) the protection of children from harm

**Please state the ground(s) for review** (please read guidance note 1)  
EXCESSIVE LOUD MUSIC FROM WITHIN THE PREMISES. EXCESSIVE  
FOUL LANGUAGE AND NOISE FROM PATRONS IN THE BEER GARDEN.  
EXCESSIVE FOUL LANGUAGE AND NOISE FROM PEOPLE LEAVING THE  
PREMISES AND WHILE SMOKING IN SWAN STREET OUTSIDE THE  
FRONT OF THE PREMISES. THIS CONSTITUTES A PUBLIC NUISANCE  
AND INTOLERABLE DISTRESS TO RESIDENTS OF NEIGHBOURING  
PROPERTIES.



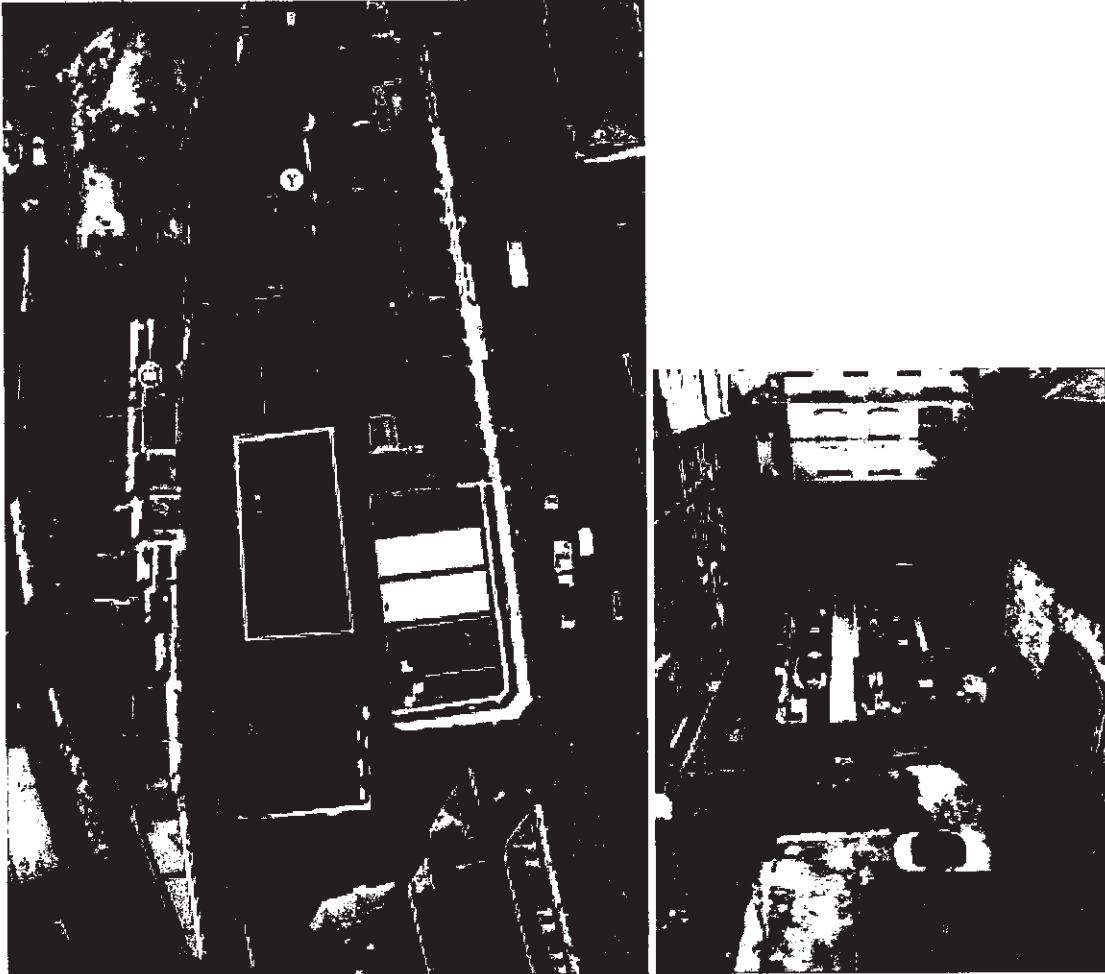
**Please provide as much information as possible to support the application (please read guidance note 2)**

THE PRESENT OWNERS OF THE PREMISES DEMOLISHED THE DERELICT BUILDINGS IN SWAN STREET ADJOINING STEAMER QUAY TO DEVELOP THE AREA INTO A BEER GARDEN. THIS HAD THE EFFECT OF CREATING A VAST OPEN AREA BETWEEN THE ROCK GARDEN PREMISES AND STEAMER QUAY. SEE ILLUSTRATION - STEAMER QUAY OUTLINED IN GREEN

DEMOLISHED BUILDINGS IN RED  
ROCK GARDEN IN BLUE.

NEW GARDEN AREA IN WHITE

2ND PIC - VIEW FROM A BEDROOM WINDOW SHOWING SOUND REDUCING MEASURES TO DATE (AFTER 2 SUMMERS OF COMPLAINING).



OVER THE PERIOD SINCE ROCK GARDEN OPENED WE HAVE ON SEVERAL OCCASIONS CONTACTED THEM REGARDING NOISE FROM WASTE GLASS COLLECTION AT 5 - 5.30AM EVERY MONDAY. NOISE FROM EMPTYING GLASS BINS BY THE CLEANERS EVERY MORNING AT 7 - 7.30 AND ALTHOUGH THESE PROBLEMS HAVE TO A CERTAIN EXTENT BEEN RESOLVED, NOISE FROM LARGE CROWDS OF INTOXICATED PEOPLE IN THE GARDEN, SHOUTING AND USING FOUL LANGUAGE IS CONTINUING TO BE AN INTOLERABLE NUISANCE. AT PRESENT THE GARDEN CLOSES AT 10PM, (BY A VERBAL AGREEMENT WITH LICENSING). A CONDITION ON THE PREMISES LICENCE STATES A CLOSING TIME OF 11PM SUN-THURS & MIDNIGHT FRI & SAT NIGHTS. THESE CLOSING TIMES WOULD BE BEYOND ACCEPTABLE. DURING THE EVENING AND LATE AT NIGHT WHEN PATRONS ARE MORE INTOXICATED, THE NOISE LEVELS INCREASE TO AN UNACCEPTABLE AND .....cont on next page

INTOLERABLE LEVEL. THIS IS CAUSING US AN INORDINATE AMOUNT OF DISTRESS AND WE ARE STARTING TO SUFFER UNACCEPTABLY HIGH STRESS LEVELS, DUE TO LACK OF SLEEP. WE ARE ALSO HAVING TO KEEP OUR WINDOWS CLOSED STOPPING FRESH AIR VENTILATION TO OUR FLAT.

AFTER THE GARDEN CLOSES, THE FRONT OF THE PREMISES IS USED AS A SMOKING AREA. THE RESULT OF THIS IS THE NOISE FROM CUSTOMERS CONTINUES FROM IN FRONT OF THE BUILDING UNTIL (AND SOMETIMES BEYOND) CLOSING TIME AT 2.30am. THE GARDEN IS FLANKED ON THREE SIDES BY RESIDENTIAL PROPERTIES, IN SWAN STREET, ROCK ROAD, COBURG PLACE, MELVILLE STREET AND THE THREE FLATS AT STEAMER QUAY.

SOON AFTER THE GARDEN WAS OPENED, A PETITION OF COMPLAINT ABOUT THE NOISE NUISANCE WAS SUBMITTED TO THE COUNCIL BY APPROXIMATELY 48 PEOPLE IN THE VICINITY. WE HAVE SUBMITTED "NOISE DIARIES" AND VIDEO EVIDENCE TO THE ENVIRONMENTAL PROTECTION TEAM OVER THE LAST 12 - 13 MONTHS. SEVERAL PROMISES OF IMPROVEMENT MEASURES HAVE BEEN MADE DURING THAT TIME BUT VERY FEW HAVE BEEN IMPLEMENTED.

SOME MEASURES HAVE BEEN PUT IN PLACE TO LIMIT BOTH THE EGRESS OF NOISE FROM WITHIN THE PREMISES AND TO REDUCE THE NOISE FROM THE GARDEN. THE OWNERS HAVE INSTALLED AN INNER DOOR TO THE GARDEN CREATING A LOBBY. THIS HAS VERY LITTLE EFFECT AS UPTO 150 OR MORE PEOPLE ARE CONSTANTLY GOING IN AND OUT OF THE PREMISES, THEREFORE BOTH DOORS ARE OPEN AT THE SAME TIME. ALSO ON SEVERAL OCCASIONS BOTH INNER AND OUTER DOORS ARE WEDGED OPEN. THE MAIN FRONT DOOR TO THE PREMISES DOES NOT HAVE A LOBBIED ENTRANCE, THEREFORE, LOUD MUSIC NOISE FROM WITHIN CAN BE HEARD EVERY TIME SOMEONE ENTERS OR LEAVES THE PREMISES. LICENSING OFFICERS, STREET WARDENS, AND COMMUNITY SAFETY HAVE VISITED OUR FLAT AND SAID IT IS NOT REASONABLE TO BE LIVING WITH THE VOLUME OF NOISE NUISANCE WE ENDURE. A SENIOR LICENSING OFFICER, WHILST ON THE PHONE TO US FROM SWAN STREET, WAS AMAZED WE COULD HEAR HER CONVERSATION WITH COLLEAGUES STANDING NEXT TO HER.

IT WAS A REASONABLY QUIET AREA BEFORE ROCK GARDEN OPENED. EVEN WHEN YATE'S AND THEN TENNISON'S HAD THE PREMISES THERE WAS NO ISSUE WITH SOUND NUISANCE.

WE ARE CONCERNED THAT THE NOISE ISSUES ARE HAVING A DETRIMENTAL AFFECT ON RENTAL/SALE VALUE OF OUR PROPERTIES. ONE OF OUR RESIDENTS HAS SAID THEY INTEND MOVING OUT IN PART BECAUSE OF THE NOISE FROM ROCK GARDEN. WE FEEL THAT WHATEVER STRUCTURAL MEASURES ARE TAKEN, THEY WILL HAVE LITTLE OR NO EFFECT ON NOISE REDUCTION, DUE TO THE GEOGRAPHIC LOCATION AND THE WAY THE WALLS AND STRUCTURES SURROUNDING THE GARDEN EFFECT SOUND VOLUME AT HIGHER LEVELS, I.E. VOLUMES ARE HIGHER AT 5TH OR 6TH FLOOR THAN AT GROUND LEVEL. WE ARE ABLE TO FOLLOW CONVERSATIONS OF PEOPLE SAT AT THE FAR END OF THE GARDEN WHEN ONLY THAT TABLE IS OCCUPIED.

WE WOULD LIKE TO POINT OUT THAT ALL OUR COMPLAINTS OF NUISANCE ARE IN CONTRAVENTION OF THE CONDITIONS ATTACHED TO THE PREMISES LICENCE :- ANNEXE 2 THE PREVENTION OF PUBLIC NUISANCE 1. 2. & 3. ANNEXE 3 THE PREVENTION OF PUBLIC NUISANCE 1.(i) & (ii) 7. 8. 9. 11. 12. 15. & 16. AND ARE COVERED BY THE COUNCIL'S GUIDANCE NOTES "CONTROL OF NOISE FROM LICENCED PREMISES".

A DVD WITH SOME VIDEO EVIDENCE TAKEN BETWEEN AUGUST 2013 AND AUGUST 2014 IS INCLUDED WITH THIS APPLICATION. ALSO ON THE DVD ARE 2 PICTURES SHOWING BEFORE & AFTER DEMOLITION AND 1 SATELLITE VIEW OF THE AREA.

**Please tick yes**

Have you made an application for review relating to this premises before

If yes please state the date of that application                      Day    Month Year

**If you have made representations before relating to this premises please state what they were and when you made them**

**NOISE DIARIES AND VIDEO EVIDENCE TAKEN ON EQUIPMENT SUPPLIED BY COMMUNITY SAFETY TEAM. ALSO VIDEO EVIDENCE TAKEN ON A MOBILE PHONE, OVER THE LAST 12-13 MONTHS.**

**Please tick yes**

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ✓
- I understand that if I do not comply with the above requirements my application will be rejected ✓

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 3)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date

.....

*11<sup>th</sup> Sept 2014*

Capacity

.....

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 5)	
<b>Post town</b>	<b>Post Code</b>
<b>Telephone number (if any)</b>	
<b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b>	

A DVD with photographs and video footage was submitted with this review application. Copies of the DVD were distributed with the applications to the premises licence holder and the consultees.

The photographs and video footage will be available to view at the licensing hearing.

# Agenda Item 6

## Appendix 2

### Licensing Act 2003

# Premises Licence

# 576

#### LOCAL AUTHORITY



Licensing Section  
 Torbay Council  
 Roebuck House  
 Abbey Road  
 TORQUAY  
 DEVON  
 TQ2 5EJ

### Part 1 - Premises Details

#### POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

## Rock Garden

40-44 Swan Street, Torquay, Devon, TQ2 5ES.

Telephone 01803 389651

#### WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

#### LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- an exhibition of a film
- a performance of live music
- any playing of recorded music
- entertainment facilities for dancing
- provision of late night refreshment
- the sale by retail of alcohol

#### THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
B. Exhibition of films (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
E. Performance of live music (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
F. Playing of recorded music (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm

**THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES continued...**

Activity (and Area if applicable)	Description	Time From	Time To
F. Playing of recorded music (Indoors) continued ...	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
	On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		
J. Provision of facilities for dancing (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
L. Late night refreshment (Indoors)	Thursday to Saturday	11:00pm	2:30am
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Friday, Saturday and Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
M. The sale by retail of alcohol for consumption ON and OFF the premises	Monday to Wednesday	11:00am	11:00pm
	Thursday to Saturday	11:00am	2:00am
	Sunday	Noon	10:30pm
	Christmas Eve	11:00am	2:00am
	Boxing Day	11:00am	2:00am
	New Year's Day	11:00am	2:00am
	To extend on Sunday until 02.00 on and until 00.00 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
	On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		
The Childrens Certificate operates from 11.00am to 7.30pm weekdays and from noon to 7.30pm on sundays.			

**THE OPENING HOURS OF THE PREMISES**

Description	Time From	Time To
Monday to Wednesday	11:00am	11:30pm
Thursday to Saturday	11:00am	2:30am
Sunday	Noon	11:00pm
Christmas Eve	11:00am	2:30am
Boxing Day	11:00am	2:30am
New Year's Day	11:00am	2:30am
To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		

Licensing Act 2003  
Premises Licence

576

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- M. The sale by retail of alcohol for consumption ON and OFF the premises

Part 2

NAME (REGISTERED) ADDRESS TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Halix Ltd  
harry@royalexeterhotel.com

The Royal Exeter Hotel, Exeter Road, Bournemouth, Dorset, BH2 5AG.  
Telephone 01202 438000

REGISTERED NUMBER OF HOLDER FOR EXAMPLE COMPANY NUMBER CHARITY NUMBER (WHERE APPLICABLE)

Halix Ltd

1551493

NAME ADDRESS AND TELEPHONE NUMBER OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

David Edward WALSH

78 Westhill Road, Torquay, Devon, TQ1 4PD.

PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OF PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES FOR THE SUPPLY OF ALCOHOL

Licence No. PA2682

Issued by Torbay

*Stephen Cox*

Steve Cox  
Environmental Health Manager (Commercial)  
7 August 2013



**ANNEXES**

**ANNEXE 1**

**MANDATORY CONDITION: WHERE LICENCE AUTHORISES SUPPLY OF ALCOHOL**

- 1) No supply of alcohol may be made under the premises licence:-
  - (a) at a time where there is no designated premises supervisor in respect of the premises licence , or
  - (b) at a time when the designated premises supervisor does not hold a personal licence or his/her personal licence is suspended.
- 2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3)
  - (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children -
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to -
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
    - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on -
      - (i) the outcome of a race, competition or other event or process, or
      - (ii) the likelihood of anything occurring or not occurring;
    - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti social behaviour or to refer to the effects of drunkenness in any favourable manner.
- 4) The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
- 5) The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
- 6)
  - (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
  - (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

ANNEXES continued

- 7). The responsible person shall ensure that -
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -
- (i) beer or cider: ½ pint;
  - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
  - (iii) still wine in a glass: 125 ml; and
- (b) customers are made aware of the availability of these measures.

**MANDATORY CONDITION: EXHIBITION OF FILMS**

- 1) Where the film classification body is specified in the licence, admission of children must be restricted in accordance with any recommendation made by that body.
- 2) Where -
- (a) the film classification body is not specified in the licence, or
  - (b) the relevant licensing authority has notified the holder of the licence that this condition applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

In the case of the aforementioned conditions

“children” means persons aged under 18; and

“film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (authority to determine suitability of video works for classification).

**MANDATORY CONDITION: DOOR SUPERVISION**

- 1) Where one or more individuals are carrying out security activities, each individual must be licensed by the Security Industry Authority.
- 2) But nothing in the aforementioned conditions requires such a condition to be imposed in respect of a) and b) and (b)(i) and (b)(ii)
- (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c. 12) (premises with premises licences authorising plays or films), are exempt.
  - (b) In respect of premises in relation to-
    - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or
    - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).
- 3) For the purposes of the aforementioned conditions:-
- (a) “security activity” means an activity to which paragraph 2(1)(a) of that Schedule applies, and
  - (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

**ANNEXE 2**

**CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**

**ANNEXES continued:**

**General**

1. The premises shall continue to operate in the same way that it does at present in terms of its trading style, customer base and activities.
2. Music videos shall be currently played at the premises under an exemption within the Cinemas Act which cannot be "converted".
3. The premises was granted a public entertainment licence after the 7th February subject to the standard conditions of the Local Authority and the premises shall continue to be operated in accordance with those provisions.
4. No customers shall be permitted to drink outside unless seated.

**The Prevention of Crime and Disorder**

1. Staff shall receive training in respect of all aspect of management of the bar and licensing law and the Barsafe policy identifies staff training as fundamental to the good conduct of premises. Training will be ongoing.
2. The manager shall be an active member of the Local Pubwatch scheme.
3. There shall be no irresponsible drink promotions and under the Barsafe policy the company operates its own minimum pricing scheme and will always adhere to any local pricing policy.
4. On any Thursday, Friday, Saturday and Sunday night that the premises remain open for the sale of alcohol after midnight and then closes after 00.30, SIA Door Supervisors shall be employed on the premises from 22.00 until close, at a ratio of one Supervisor per one hundred customers (this condition shall also apply on Christmas Eve and New Years Eve when they do not fall on a Thursday, Friday, Saturday or Sunday). On all other occasions, the Premises Licence holder shall risk assess the requirement for Door Supervisors and employ such Door Supervisors, if at all, in such numbers and at such times determined by that risk assessment.
5. All drinks must be served in toughened, strengthened, polycarbonate or plastic glasses. No alcohol shall be served in glass bottles from which it is intended or likely that customers shall drink, from 20:00 onwards.

**Public Safety**

1. Sufficient numbers of staff shall be employed to provide an efficient service at the bar and in addition to waiting on customers who are dining at the premises.
2. The premises shall maintain electrical systems including fire alarm, emergency lighting, all electrical installation and gas appliances with annual test and more frequent as required.
3. All receptacles on the external decking area (waste bins etc) shall be comprised of non-combustible materials.

**The Prevention of Public Nuisance**

1. Customers shall be advised by staff and doorstaff to leave the premises quietly and respect the neighbours.
2. Doorstaff shall ensure doors and windows remain closed from 9pm.
3. Music shall not be played at a level which would be intrusive for neighbours and any advice form the Environmental Health Officer shall be followed.
4. The premises shall remain open 30 minutes after the sale of alcohol has ceased and more sedate music shall be played at a much lower level to provide a wind down period before closing.
5. Outside decking area shall only be used for consumption of alcohol between the following hours:-

Monday- Thursday	- 11.00 hours - 23.00 hours.
Friday - Saturday	- 11.00 hours - Midnight
Sunday	- Noon - 23.00 hours.

Sundays before a Bank Holiday and Bank Holiday Mondays - 11.00 hours - Midnight.

ANNEXES continued

**The Protection of Children From Harm**

1. No person under the age of 18 shall be permitted into the premises after 8pm.
2. Only photographic identification shall be accepted being a passport or driving licence.
3. The premises shall operate "challenge 21" and any person who appears under the age of 21 shall be asked for ID.

**Additional Conditions Transferred from the Licence**

1. Substantial food to be available at all times the premises are open.
2. Full CCTV be installed at the premises, to include a recording monitor behind the bar servery. Recordings to be retained for a minimum of 14 days, during which time they will be available to a police officer on demand at any reasonable time. Such system to be installed in liaison with the Police Licensing Department.

**ANNEXE 3**

**CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY**

**Prevention of Crime and Disorder**

1. The premises shall join and maintain their membership to the "Nitenet" system currently in operation within Torbay.
2. All persons employed to serve alcohol to members of the public must be over the age of 18.

**The Prevention of Public Nuisance**

1. Noise or vibration shall not emanate from the premises such as to cause persons in the neighbourhood to be unreasonably disturbed. In general terms, noise from the premises should not be audible within any noise sensitive premises (e.g. dwelling) with windows open for normal ventilation especially after 11pm. 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 11pm - Noise emanating from the premises shall not be clearly distinguishable above other noise.
  - (ii) After 11pm - Noise emanating from the premises shall not be distinguishable above background levels of noise.
  - (iii) The local authority shall reserve the right in cases of tonal noise and where premises are attached to others (i.e. semi's and terraced properties), to make further assessments from within the residential property.
2. A noise limitation device must be installed to control the system to which all amplification equipment is fitted. This device shall be regularly maintained to ensure that the noise produced within the premises will not be audible within any residential properties in the vicinity.
3. The volume at amplified sound used in connection with the entertainment provided shall at all times be under the control of the Licensee/Management and the controlling mechanism shall be operated from a part of the premises not accessible to the public.
4. Noise levels within the premises resulting from the operation of any musical instrument or amplified equipment shall be regulated so as to protect the hearing of any employee therein in accordance with current standards.
5. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect of the needs of local residents and to leave the premises and the area quietly.
6. The placing of refuse, such as bottles, into receptacles outside the premises must take place at times that will prevent disturbance to nearby properties.
7. Deliveries of kegs, bottles, food or 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.
8. Doors and windows must be kept shut during entertainment to reduce noise breakout. A management scheme shall be in place to ensure this situation remains.

**ANNEXES continued**

9. Patrons shall be asked not to stand around talking in the street outside the premises or any car park, and asked to leave the vicinity quickly and quietly.
10. An announcement shall be made prior to closing requesting patrons' cooperation in leaving the premises and vicinity as quietly and quickly as possible.
11. Staff shall check prior to entertainment, and periodically during the entertainment, that all windows and doors are shut.
12. A senior member of staff (manager) shall assess the impact of any noisy activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/entertainment to ensure levels of noise have not increased.
13. Provision of mechanical ventilation and air conditioning system shall not allow noise breakout from the premises or cause a nuisance by its operation.
14. Regular maintenance shall be carried out on all plant and machinery to ensure that noise disturbance from such sources is kept to a minimum.
15. The handling of beer kegs, bottles and other similar items must not take place in the late evening, at night and during the early morning, when the noise generated could cause a nuisance particularly outside buildings.
16. Bottle skips and bins containing cans or bottles shall not be emptied outside after closing but will be dealt with the next day during normal office hours.
17. The movement of bins and rubbish outside the premises shall be kept to a minimum after 11.00pm. This will help to reduce the levels of noise produced by the premises.
18. Cooking, noxious or persistent smells from the premises shall not cause a nuisance to nearby properties and the premises must be properly vented.
19. When food for consumption off the premises is sold, adequate waste receptacles for use by patrons shall be provided in the local vicinity. All the rubbish produced by the premises shall be stored securely in a designated area or in a bin with a tight fitting lid. This will help prevent litter being blown around.
20. Facilities for depositing litter and the collection of litter generated by patrons shall be available and maintained, where outside areas are provided for the use of patrons.

**ANNEXE 4**

**PLANS**

Copy attached to Licence.

## LOCAL AUTHORITY



Licensing Section  
Torbay Council  
Roebuck House  
Abbey Road  
TORQUAY  
DEVON  
TQ2 5EJ

## Premises Details

## POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

**Rock Garden**

40-44 Swan Street, Torquay, Devon, TQ2 5ES.

Telephone 01803 389651

## WHERE THE LICENCE IS TIME LIMITED, THE DATES

Not applicable

## LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- an exhibition of a film
- a performance of live music
- any playing of recorded music
- entertainment facilities for dancing
- provision of late night refreshment
- the sale by retail of alcohol

## THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To	
B. Exhibition of films (Indoors)	Monday to Wednesday	11:00am	11:30pm	
	Thursday to Saturday	11:00am	2:30am	
	Sunday	Noon	11:00pm	
	Christmas Eve	11:00am	2:30am	
	Boxing Day	11:00am	2:30am	
	New Year's Day	11:00am	2:30am	
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.			
	<hr/>			
E. Performance of live music (Indoors)	Monday to Wednesday	11:00am	11:30pm	
	Thursday to Saturday	11:00am	2:30am	
	Sunday	Noon	11:00pm	
	Christmas Eve	11:00am	2:30am	
	Boxing Day	11:00am	2:30am	
	New Year's Day	11:00am	2:30am	
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.			
	<hr/>			
F. Playing of recorded music (Indoors)	Monday to Wednesday	11:00am	11:30pm	
	Thursday to Saturday	11:00am	2:30am	

## THE PREMISES LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES continued

Activity (and Area if applicable)	Description	Time From	Time To
F. Playing of recorded music (Indoors)	continued ...		
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
	On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		
J. Provision of facilities for dancing (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
L. Late night refreshment (Indoors)	Thursday to Saturday	11:00pm	2:30am
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Friday, Saturday and Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
M. The sale by retail of alcohol for consumption ON and OFF the premises	Monday to Wednesday	11:00am	11:00pm
	Thursday to Saturday	11:00am	2:00am
	Sunday	Noon	10:30pm
	Christmas Eve	11:00am	2:00am
	Boxing Day	11:00am	2:00am
	New Year's Day	11:00am	2:00am
	To extend on Sunday until 02.00 on and until 00.00 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day. The Childrens Certificate operates from 11.00am to 7.30pm weekdays and from noon to 7.30pm on sundays.		

## THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Wednesday	11:00am	11:30pm
Thursday to Saturday	11:00am	2:30am
Sunday	Noon	11:00pm
Christmas Eve	11:00am	2:30am
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New Year's Day	11:00am	2:30am
To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		

**WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES**

- M. The sale by retail of alcohol for consumption ON and OFF the premises

**NAME (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE**

Halix Ltd

The Royal Exeter Hotel, Exeter Road, Bournemouth, Dorset, BH2 5AG.

**REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)**

Halix Ltd

1551493

**NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL**

David Edward WALSH

**STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED**

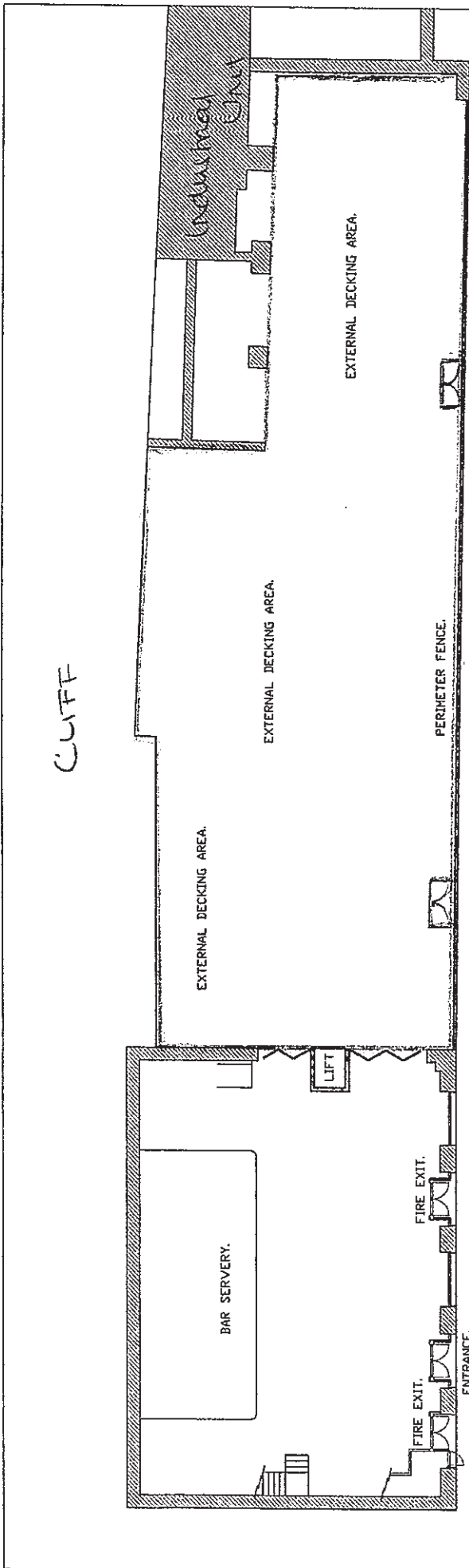
Access is restricted only under the terms of the Licensing Act 2003.



Steve Cox  
Environmental Health Manager (Commercial)  
7 August 2013







GROUND FLOOR PLAN.

NB. 2 Fire Exit door to be  
Put in perimeter fence.

**David Golightly**

Consulting Engineers Ltd  
11a Wadsworth Road, St. Thomas, Exeter, EX4 1HB.  
Telephone - 01392 411733

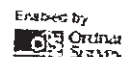
Project. Swan Street, Torquay. TQ2 5ES.

Drawn D.G. Date Nov '11

Drawing. Ground floor plan.

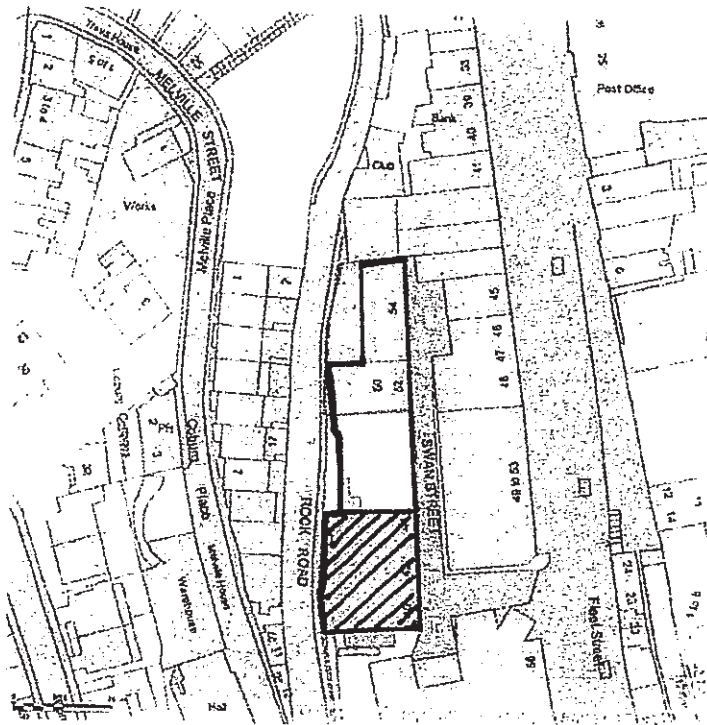
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Dwg No 10011/02



SITE LOCATION PLAN  
AREA 2 HA  
SCALE 1:1250

CENTRE COORDINATES: 291698, 63806



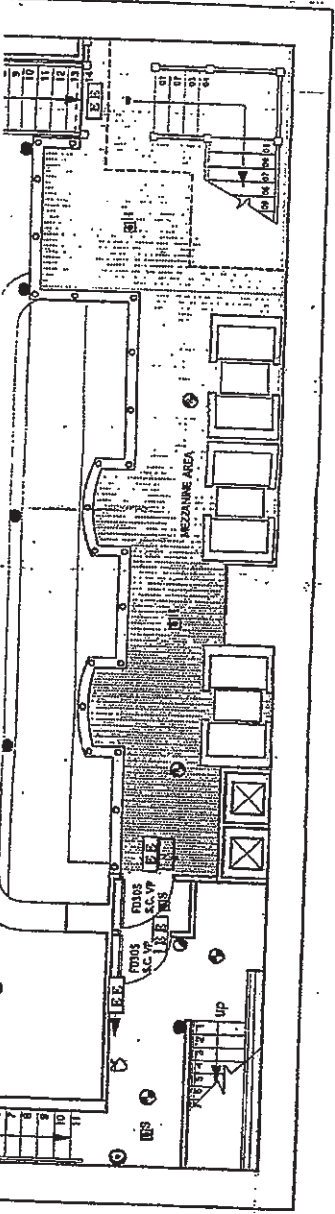
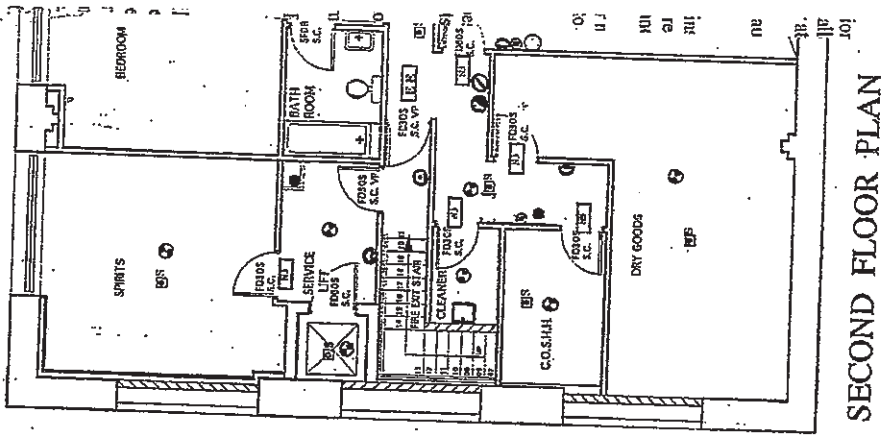
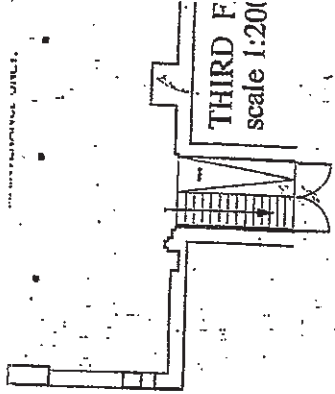
Supplied by Streetwise Maps Ltd  
www.streetwise.net  
reference No: 1004/444  
11/06/2011 08:47

OS Map/Site Location - P/2011/0692 (25.06.2011)

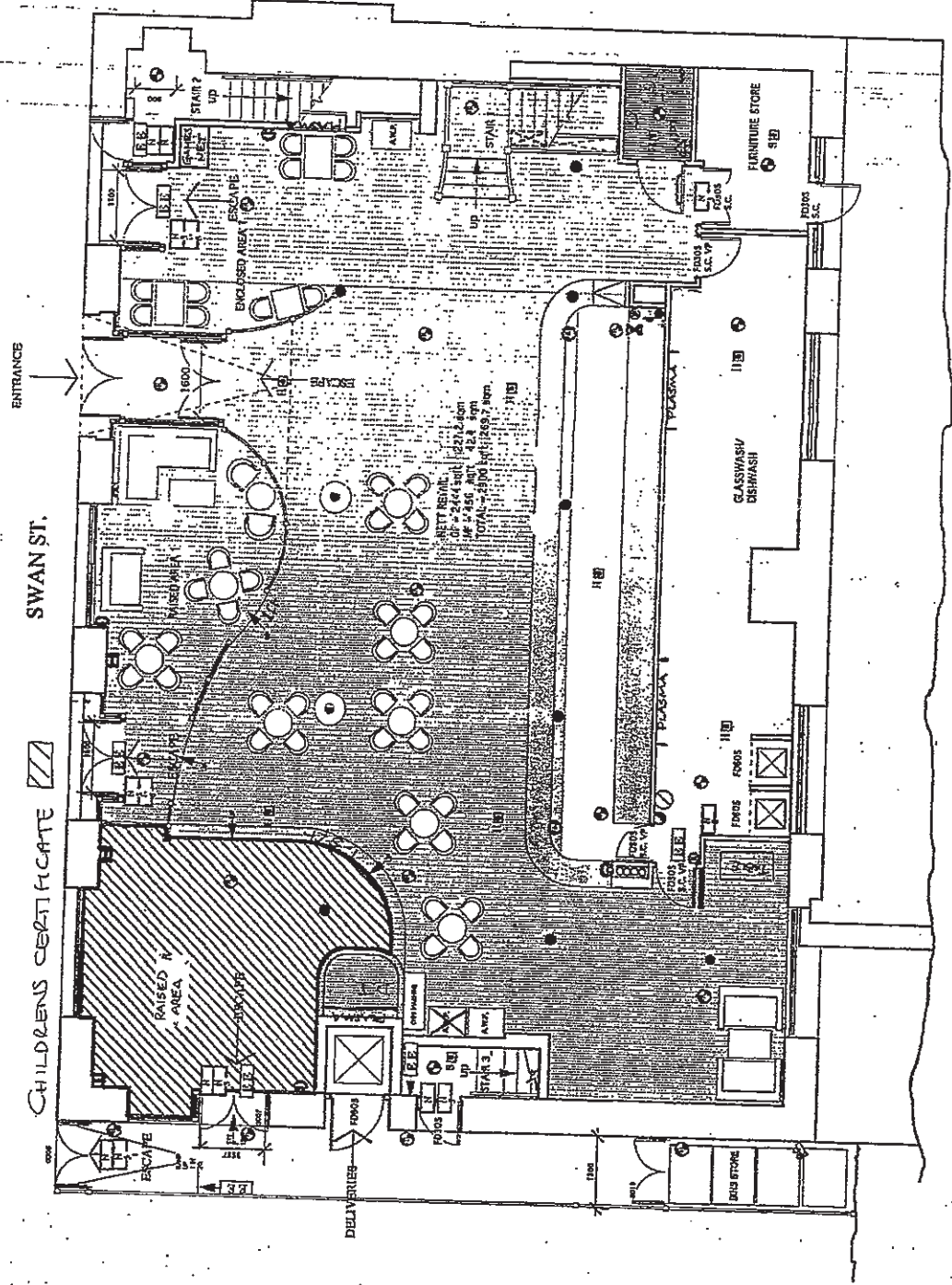


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P/2011/0692-1(i)



MEZZANINE FLOOR PLAN



GROUND FLOOR PLAN

**LICENSING.  
NOTES  
FIRE ALARM**

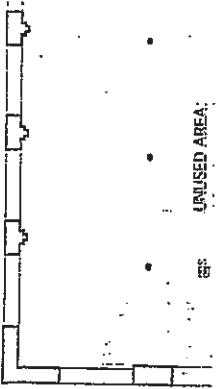
An automatic fire alarm and detection instal. the requirements of BS 5839 Part 1. The in of two break-glass units located behind the cable.  
Sounder points to be positioned to achieve the Standard.  
See plans for positions of break-glass units. All electrical wiring, apart from the fire alarm in a wiring system to the requirements of the be installed to meet the latest IEE regulation set out in BS 5266.  
Where sockets outlets in the public area are equipment, they are to be protected by RCD current not exceeding 30 milliamps.

**FIRE FIGHTING EQUIPMENT.**

Fire fighting equipment will be installed of it Fire extinguishers should be hung from brackets 1100mm above floor level.  
All equipment to be provided and maintained authority.  
All equipment will be to BS 5423 and will be Part 3, 1985 all fire related  
Signs and notices are to comply with BS 5445

**CEILING AND WALL FINISHES.**

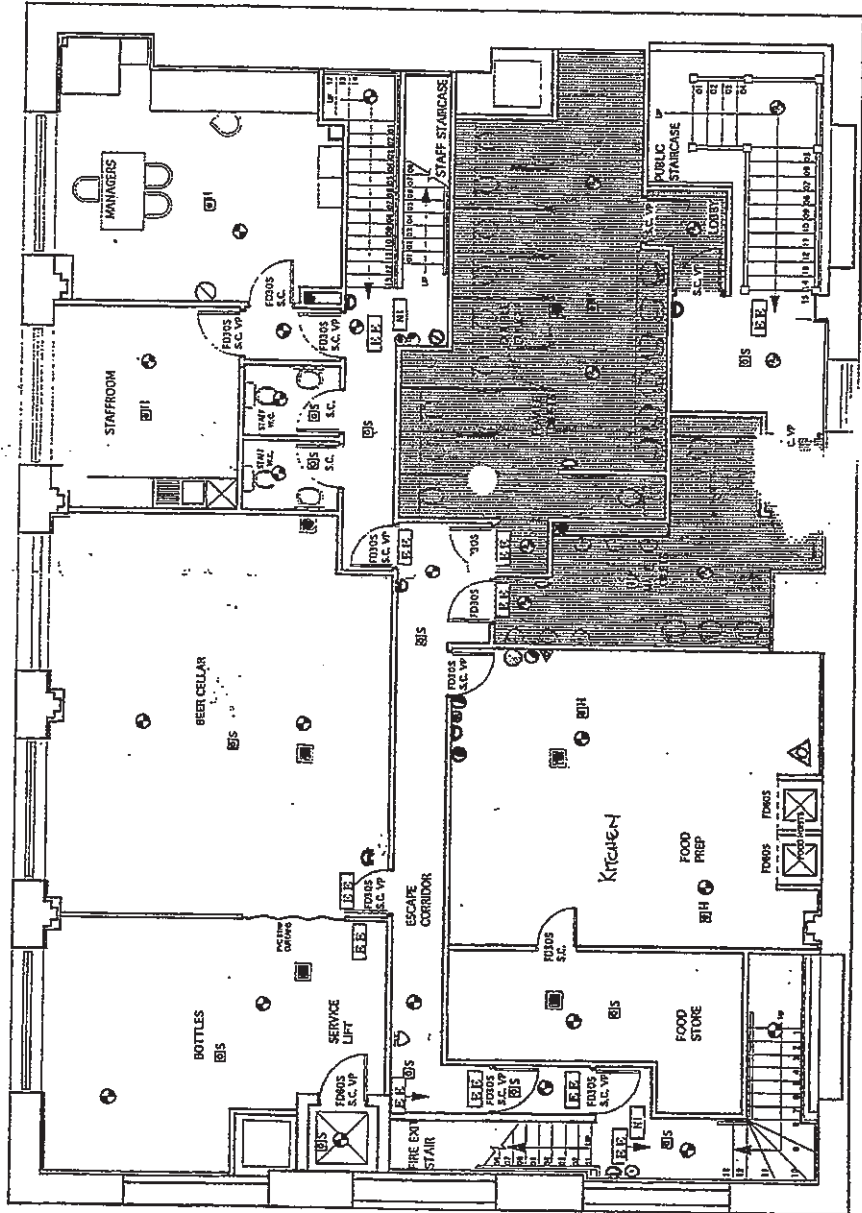
All walls to kitchens and toilets are to be paintwork above or gloss painted above. The ceiling and wall finishes in the prein Surface Spread of Flame, all to BS 476 Part 1 routes and circulation spaces. Artificial pl treated to have a resistance to Surface Spread source 5, Part 1 and 2 or 5865 Part 2 as r Curtains and drapes to comply with BS 54 BS 4790, Low Spread.  
All large areas of panelling including balcony Ballrooms system by F.T. Morell.



	Emergency lighting Luminaires - internal external and recessed		Break Glass Fire Alarm Point		Fire Alarm Sounder		Smoke Detector		Heat warning device		"X-ray" fire alarm beacon to DPT.		Emergency buzzer linked from lift.		VP Vision panel
	Illuminated angle added call sign		A sign, with directional arrow provided, direction indicated		Unmanned double added call sign		Half fire fire detector		Half fire fire detector		One fire fire detector		Self-closing (on doors)		
	General fire procedure notice		Fire escape keep clear		Push bar to open		Note: All fire resistant doors to have notice "Fire Door, Keep Shut" on both sides except where indicated as N.A.								
	Fire Blanket		Dry Extinguisher		Carbon Dioxide Extinguisher		9 litre Water Extinguisher		Point Fire Extinguisher						

**NOTICES.**

**FIRE EXTINGUISHERS**



**FIRST FLOOR PLAN**

## EMERGENCY LIGHTING.

The emergency lighting installation will be installed to comply with the requirements set out on BS 5266 Part J. The installation will be wired to operate on local circuit failure and not just mains failure.  
The emergency lighting will achieve a level of 2 Lux illumination.  
The emergency lighting will be provided to all parts of the building used by the public as well as service areas, staff accommodation etc.  
The emergency lighting will be provided by self contained units, unless a maintained system required by the local Fire Officer.  
The units installed will have a three hour duration.  
All building exits and emergency exits will have illuminated box signs to BS 5266 above doorways, these signs will have a maintained light with an emergency override facility.  
All emergency lighting luminaires to fire escape staircases, corridor / routes will be connected to a maintained system of emergency lighting.  
The maintained system of emergency lighting will be linked into essential lighting e.g. bar lighting via 4 pole switch.  
All changes in floor level will have emergency lighting points directly over.  
The emergency lighting system is to have a central battery system in accordance with the local authorities specification for licensed premises.

## GLAZING.

All glazing in critical locations shall be in safety glass in compliance with Approved Document N of the Building Regulations and etched accordingly.  
All raised floor areas shall have balustrades where adjacent to windows and glazed areas.

## COMPARTMENTATION.

All walls forming rooms such as food preparation, stair lobbies etc. will be taken up to the underside of the structural soffit to form one hour fire resistant compartment walls. Any voids will be packed with non-combustible material.  
Any penetrations to be formed as protected shafts in accordance with B3.

7 Part 2 Type B. Carpets to comply with

IC will be treated with fire retardant.

in will be installed to comply with  
ilation will consist of a minimum  
it ground floor, all wired in MICC

udibility required by the British

installation, will be carried out  
& local authorities and will  
d to comply with the requirements

musical equipment or sound / light  
BS 4293, having a rated tripping

s and in locations as shown,  
: with handle approximately

the specification of the local fire

ain@med as requested in BS 5306

1984 and BS 5378 Part 1 1988

Page 35

ed to a height of 2 metres with gloss

cialist's stainless steel unit.

3 will achieve Class I Restriction to the

1. Class O shall be provided to all escape  
ing, curtains and upholstery fabrics must all be  
d of Flame as required by BS 5852 Ignition  
want.

7 Part 2 Type B. Carpets to comply with

IC will be treated with fire retardant.

## EMERGENCY EXIT ROUTES & DOORS.

All emergency exit doors will open outwards and where appropriate will be positioned within the building so as not to open across a pavement.  
External front entrance doors which open inwards will be secured open while the public are on the premises.  
Nosings of any steps and the edges of any landings are to be made conspicuous by white painting or other effective means, including appropriate nosings.  
Exit door will be fitted with push-bar panic bolt ironmongery and a sign mounted adjacent at eye level saying "Push Bar to Open".  
All emergency exit routes and doors will be of a width suitable for the agreed occupancy numbers.  
Routes will be kept clear of obstruction, and furniture and equipment will be positioned accordingly.  
All doors on escape routes, including corridors which are lockable, shall be fitted with appropriate panic release mechanisms on the side that affords escape.  
Any width stated on the plans shall be the clear width when the door is in the open position.  
Elsewhere doors should only be fitted with simple fastenings that can be readily operated from the side approached by people making escape. The operation of these fastenings should be without the use of a key and without having to manipulate more than one mechanism.  
All circulation spaces and emergency escape routes will achieve class O restriction to the surface spread of flame.

## ACCESS FOR DISABLED PERSONS.

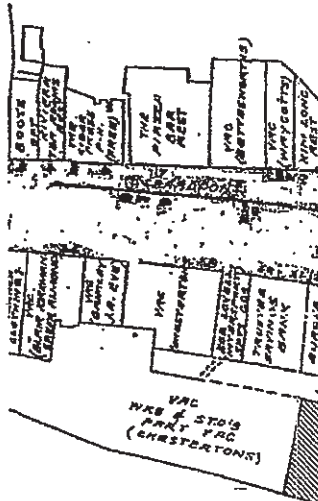
The main front door is designed to afford level wheelchair access and access for the disabled is available to the bar and most parts of the premises. A disabled persons' toilet, with 'radar' look, is provided and equipped to the requirements of Part M of the Building Regulations.

## HEATING AND VENTILATION

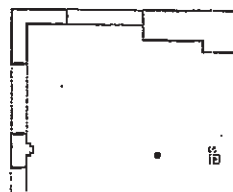
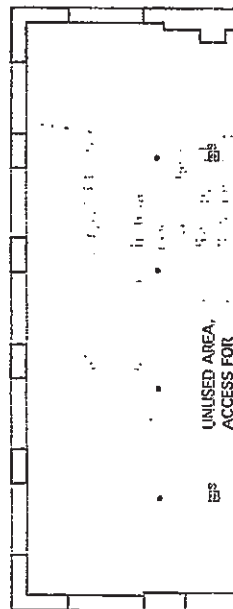
Details of Flues, Combustion air supply etc to boiler room to be in accordance with Part J of the building regulations.

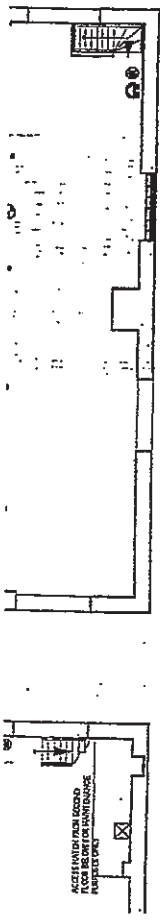
All Mechanical ventilation and air conditioning to be in accordance with BS5720 1979 to achieve adequate ventilation extract rates to all parts of the building.

All ventilating ductwork and air handling ducts should be designed in accordance with BS5588 part 9

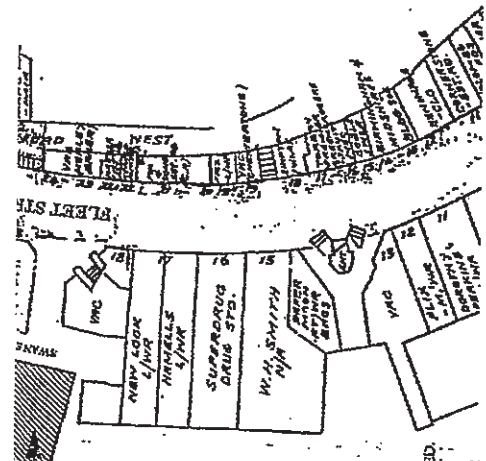
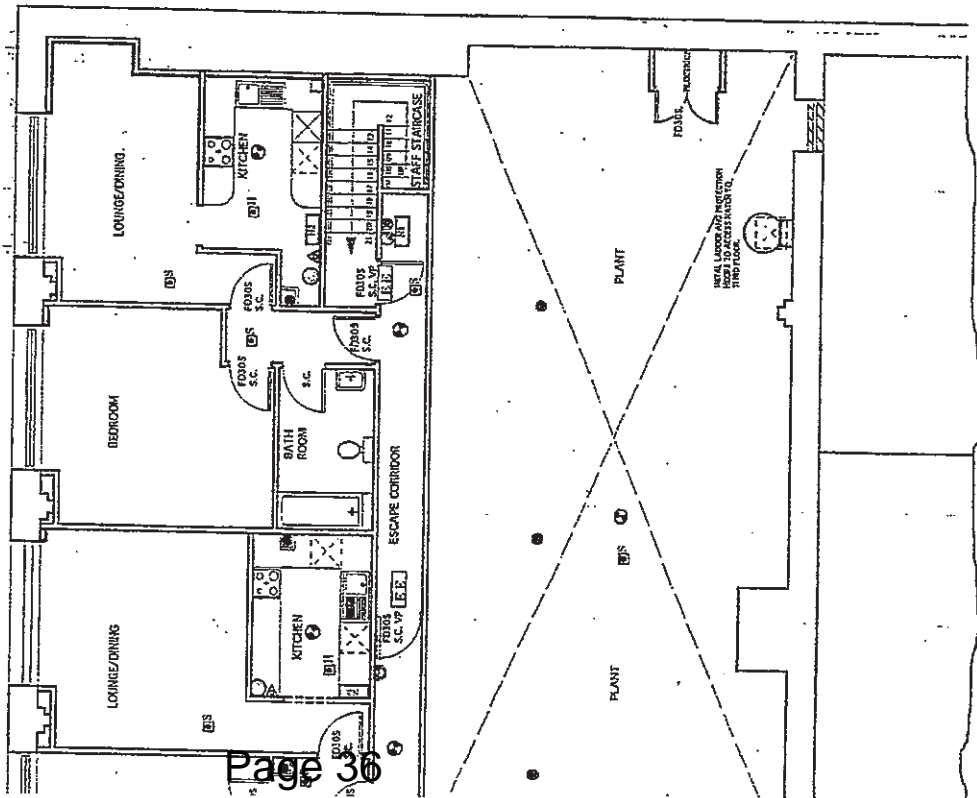


No 40-44  
ST. PAUL'S CHURCH





**DOOR PLAN**  
FOURTH FLOOR PLAN  
Scale 1:200



**LOCATION PLAN**  
Scale 1:1250

- REV K 02/10/01 CRC  
1. DANCE FLOOR AREA INCREASED IN SIZE.
- REV J 13/09/01 CRC  
1. DANCE FLOOR AREA DEFINED.
- REV H 25/06/01 CRC  
1. CHILDREN'S CERTIFICATE AREA INDICATED.
- REV G 01/05/01 CRC  
1. DANCE FLOOR AREA INDICATED.
- REV F 23/04/01 CRC  
1. POSITION OF THIRD AWP INDICATED.
- REV E 15/03/01 CRC  
1. RAMP TO MAIN ENTRANCES LIGHTENED.  
2. LAYOUT OF DISABLED PERSONS TOILET MIRRORED.  
3. 2 LNO. WC CUBICLES COMBINED INTO DOUBLE CUBICLE IN PUBLIC REARL TOILETS.  
4. LADDER ACCESS FROM 2ND FLOOR PLANT ROOM TO 3RD FLOOR REPOSITIONED.
- REV D 19/12/00 CRC  
1. BEER GARDEN OMITTED AND ACCESS PASSAGE INDICATED AT REDUCED WIDTH.  
2. EXTERNAL ESCAPE DOOR FROM RAISED AREA 2 OMITTED.  
3. ADDITIONAL EXTERNAL ESCAPE DOORS TO FRONT FROM RAISED AREA 1 INDICATED.  
4. DOOR BETWEEN FIRST FLOOR FOOD PREP AND FOOD STORE REPOSITIONED.
- REV C 18/11/00 CRC  
1. REAR SIDE REAR AREA EXTERNAL DOOR OMITTED.  
2. GLAZED SCREEN TO EXTERNAL WALL ADDED.  
3. POSITION OF ESCAPE DOOR FROM STAIR 2 TO FRONT ALTERED.  
4. EXTERNAL OPENING FROM RAISED AREA 2 ALTERED.
- REV B 16/09/00 CRC  
1. GROUND FLOOR AND FIRST FLOOR RE-PLANNED.  
2. MEZZANINE FLOOR ADDED.  
3. SECOND FLOOR DEVELOPED AS PLANT, STORES AND BLAT ACCOMMODATION  
4. BRICK GUARDRAIL ADDED.
- REV A 23/03/00 A.Hill  
1. AMENDED IN ACCORDANCE WITH BOLTON METRO RECOMMENDATIONS

Under the BLAT Conditions of Engagement the copyright in all drawings specifications and documents prepared by the Designer and in the work executed from them shall remain the property of the Designer unless otherwise agreed. Do not scale from the drawing. Work to figured dimensions. Check all dimensions on site. In the event of any discrepancy, refer query to the Designer.

**YATES'S WINE LODGE**  
40-44 SWAN STREET,  
TORQUAY

**LICENSING DRAWING**

DRAWN	A.Hill	DATE	13/03/00	DRAWING No.	0008/02/K
SCALE	1:100 & 1:200	REV DATE			

## Memorandum

---

To:		From :	Mr Karl Martin
c.c	TORBAY COUNCIL	Contact :	
c.c.	10 OCT 2014	Ext :	01803 208025
c.c	COMMUNITY SAFETY	My Ref :	12V SRU No:
For the attention of:		Your :	
Mandy Guy, Licensing Officer		Ref :	
		Date :	

---

**Subject: Review of Rock Garden, premise licence number PL0576**

### 1. Overview

- a) Based on the evidence collected by officers of Torbay Councils Community Safety and Public Health department and evidence submitted by residents surrounding Rock Garden I wish it to be known to the members of the Licensing Sub-Committee I support the review of Rock Garden cafe and bar for reasons set out in this memorandum.

### 2. Background

- a) Rock Garden is set back from Fleet Street on Swan Street and is in the cumulative impact area.
- b) The building dates from the early 1800's and in 2005 the alcohol licence was transferred to the new licensing regime under grandfather rights. At this time the land the beer garden now sits was occupied by derelict warehousing units associated with the original quay. See appendix 1 for general maps of the area.
- c) November 2010 the premises licence was transferred to Halix Ltd. Harry Brewer is the current company director for Halix Ltd.
- d) August 2012 planning application submitted to Torbay Council Planning department by Halix Ltd. Community safety is a statutory consultee and is informed by Torbay Councils Principle Planning Officer.
- e) The application seeks a change of use of the vacant land previously occupied by derelict warehousing for the creation of an outdoor area alongside the existing licensed premises.
- f) Mrs Katherine Griffiths, Senior Environmental Protection Officer objects to the planning application on the grounds of noise nuisance.
- g) A comprise is agreed with Mrs Katherine Griffiths and Halix Ltd on the proviso that a suitable management plan is developed and agreed. See appendix 2. Planning permission granted.



h) March 2012. A full variation application of the premise license submitted by Halix Ltd is accepted by Torbay Councils licensing authority. The application sought to extend the licensing area to include a beer garden on the site of the former derelict warehousing. No objections from responsible authorities or interested parties is received.

i) The beer garden an area approximately 50mx20m is licensed with the following annex 2 conditions:-

*4. No customers shall be permitted to drink outside unless seated.*

*5. Outside decking area shall only be used for consumption of alcohol between the following hours:-*

*Monday- Thursday - 11.00 hours - 23.00 hours.*

*Friday - Saturday - 11.00 hours - Midnight*

*Sunday - Noon - 23.00 hours.*

*Sundays before a Bank Holiday and Bank Holiday Mondays - 11.00 hours - Midnight.*

No arrangements for maximum numbers, however the management plan submitted for planning permission refers to 150 persons seated.

j) In early June 2013 the premises begins trading as 'Rock Garden'.

### 3. Noise complaints received to date

a) June 28th 2013 the Licensing and Public protection department receives its first complaint from a resident about noise from customers in the beer garden and music breakout. The resident is sent a diary sheet, but this is not returned. Later the complainant stated his friend has started working at rock garden and withdraws his complaint. The authority has had no further contact with the resident to date. The resident lives above the premises on Rock road.

b) July 3rd a second complaint is received by the department. A diary sheet was sent, but not returned. The same resident phoned the Police on a number of occasions complaining about noise from people in the beer garden and music breakout. No further contact from the resident with the Authority or the Police Authority to date. The resident lives above the premises on Rock road.

c) August 21st a third complaint is made by a resident via Torbay Councils Mayor. This time the resident returns a diary sheet and engages with the Authority. The complaint is about noise from customers using the beer garden and music breakout. Two visits are made to the residents home for the purpose of assessing the alleged nuisance. The resident lives above the premises on Coburg Street.

d) August 22nd a petition is received from residents of Coburg place, Rock Road, Swan Street and Melville Street. 35 legible or verified signatures of residents were written to informing them of the Authorities position and ask to complete and return a diary sheet. Despite reminder letters and various telephone calls only one resident made contact with the Authority, this was logged as a 4th official complaint. The resident lives on Coburg place and complained about noise from the beer garden and noise from music breakout. The resident was written to requesting contact details to arrange a visit to their home, but the resident did not respond. The Authority has had no further contact with the resident.

e) 27<sup>th</sup> August the authority received a diary sheet and letter of complaint from a 5th complainant. The residents are Mr BurrIDGE and Mr Gibbons of Steamer Quay Rock Road. Please see appendix 3 for a sample of recent diary sheets.

- f) To date the Authority has had no new complainants. The department maintains regular contact with the 3<sup>rd</sup> resident, who has had concern to mention noise was a problem on two occasions throughout the summer of 2014. One Saturday during the World Cup and the second on August Bank Holiday Saturday. The resident holds the view that the noise from the beer garden is tolerable as it now closes at 10:00pm instead of midnight at the weekends during the summer of 2014.

#### **4. Brief chronology of events**

- a) August 2013, several meetings with the DPS, Mr David Walsh at the premises to discuss noise complaints. Discussions included the installation of a double door lobby leading out to the beer garden. Lobby completed mid October.
- b) Late August/early September 2013. Noise consultant employed by Halix Ltd to assist with noise breakout from music and noise from customers in the beer garden.
- c) 7<sup>th</sup> September first visit made to the third resident on a Saturday evening. Two visits made one at approx 8:30 and a second at 22:30. The evening was unseasonably cold. Customers and music could be heard on the resident's balcony. Noise from customers in the beer garden was constant and music breakout out was intermittent. It was assumed this was because the door leading to the beer garden was not a double door lobby. The noise was not considered a statutory nuisance on this occasion as it could not be heard in the resident's home. This may have been different if the resident were able to enjoy the facilities offered by their balcony.
- d) Further meeting in September with David Walsh and Harry Brewer to discuss nuisance. See appendix 4.
- e) 21<sup>st</sup> September first visit to Mr Burrige and Mr Gibbons. Their flat overlooks the beer garden. Noise from customers in the beer garden could be heard inside their flat at levels deemed a statutory nuisance. The nuisance was witnessed in a bedroom and the living space. Complainants continue to provide diary sheets.
- f) 25<sup>th</sup> September 2013 Mr Harry Brewer written to requiring a written scheme of works within 7 days to avoid an abatement notice being served in accordance with good practice. See appendix 5.
- g) 2<sup>nd</sup> October 2013 letter received from Mr Brewer outlining work to be undertaken to resolve noise issues. Measures proposed include exploring engineering controls in the beer garden, improved management in the beer garden, confirmation of lobby doors, reducing numbers of people in the garden by 20% and closing the beer garden at 11:00pm amongst other proposals. See appendix 6.
- h) 8<sup>th</sup> October 2013 telephone conversation with Mr Neil Carpenter giving details of works to reduce music breakout. Measures include setting a number of limits for live and recorded music, moving live bands from a stage up stairs that was located next to the pizza oven flue to a more suitable position downstairs and house monitor speakers purchased as guest bands were bringing their own monitor speakers.

Mr Carpenter at this time started investigating and liaisons with specialist acoustic companies to develop and evaluate suitable engineering controls to reduce the noise breakout from customers using the beer garden. Early recommendation included cladding walls with absorbent materials and partitioning the garden into smaller areas and utilising soft furnishings.

Mr Carpenter also installing monitoring equipment on the wall below complaints flat to build a concise picture of noise breakout from the beer garden.

- i) 14<sup>th</sup> October 2014 meeting with Mr Harry brewer, Mr Neil Carpenter and Mr David Walsh with Mr Karl Martin and Mr Steve Cox of Torbay Council Community Safety Team. Meeting was arranged to discuss on-going noise complaints and action to take. Mr Brewer agreed to close the beer garden at 9pm as an interim measures until effective remedial measures can implemented.
- j) 18<sup>th</sup> October 2013, email from Mr brewer confirming he will voluntarily close the beer garden at 9:30pm 7 days a week, instead of the previously agreed 9:00pm.
- k) November – March 2014 nuisance from the beer garden has been abated due to weather conditions. Mr Burrige and Mr Gibbons continue to send diary sheets regarding other matters with the occasional entry of noise from the beer garden. At this time the beer garden is unlikely to be causing a statutory nuisance.
- l) 4<sup>th</sup> March video evidence received from Mr Gibbons showing on previous Saturday night beer garden was open until 10:30pm.
- m) 11<sup>th</sup> March 2014 update on progression of works. Mr Carpenter has installed monitoring equipment to establish background levels. Monitoring will be continuous for three weeks. Investigations continue into the propose noise sails.
- n) March – June 2014 evidence continues to be collected by Mr Gibbons and Mr Burrige and regular progress is sought and given by Mr Brewer or Mr Carpenter regarding the noise sails.
- o) 23<sup>rd</sup> June 2014 Meeting with Harry Brewer and David Walsh. At this time noise sails had been ordered and a sail maker has been employed to stitch absorbent foam into the panels. Mr Brewer has also order acrylic screen to break up the beer garden but was reluctant to use them until we know if the sails work.
- p) 28<sup>th</sup> June 2014 – Visit made to Mr Burrige and Mr Gibbons home. Nuisance amounting to Statutory nuisance witnessed. As on previous occasion nuisance was witnessed from voices of people enjoying the facility of the beer garden. Please Appendix 7.
- q) 15<sup>th</sup> July 2014 meeting with Harry Brewer, Mr Gibbons and Mr Burrige to discuss ongoing work.
- r) 25<sup>th</sup> July work is due to be completed on the noise sails. Visit premises reveals little progress has been made.
- s) 8<sup>th</sup> August 2014 Officer attempt to visit but do no gain access to their home. Officers arrive at 10:15 and note the beer garden was closed and two sails where seen suspended.
- t) 27<sup>th</sup> September 2014 visit made to Mr Burrige and Mr Gibbons flat. The noise sails work had been completed. Mr Karl Martin and David Walker of Torbay Council witnessed Statutory nuisance. It was evident the noise sails had not had the desire effect. The overall volume from the beer garden had no chance and was still intrusive in the complaints home.

- u) 7<sup>th</sup> October 2014 a s79(1)(g) noise abatement notice is served on Halix Ltd requiring the owner of rock garden to cease forthwith the nuisance from voices emanating from the beer garden. See Appendix 8.
- v) 9<sup>th</sup> October 2014 due to a complaint being received on the 5<sup>th</sup> October stating the noise sails collapsed after heavy rain fall. A visit was made by David Walker SEHO, Building control Officers to assess the risk. It was deemed a significant risk that David Walsh agreed to close the beer garden until either a full structural report can be submitted to building control for approval or the noise sails are removed.
- w) 10<sup>th</sup> October Mr Brewer informed David Walker the noise sails had been removed until further notice.

## 5. Conclusion

- a) Shortly after the premises opened to the public the authority began to receive a steady stream of noise complaints citing music breakout from within the building and noise from customers in the beer garden as the cause of disturbance.
- b) The beer garden is surrounded effectively by one rock face and surrounding built lends its self to unusual acoustic effects. The hard surface of rock face wall and surrounding buildings have highly reflective acoustic surfaces and as a consequence noise emanating from the beer garden reflects off the hard surfaces increasing the reverberation time it takes for the noise to lose energy. The effects are similar to an auditorium but unlike an auditorium the sound leaving the beer garden is hitting large flat hard surfaces producing prominent reflections. Compounding this effect, parallel hard surfaces produce patterns of flutter echo as the sound reflects off one surface to another and so on until the sounds escapes the area around the beer garden. The more people in the beer garden, the greater the effect. This explains why officers noted whilst stood in the beer garden noise is surprisingly quieter compared to what can be heard in the residents homes above. The net effect of the environment the beer garden is situated in means residents higher above the garden are offered no protection against noise leaving the garden and experience phenomena not felt at ground level.
- c) The beer garden is a question of location, numbers and timings. The effect of sound as it propagates from source is well understood in an environment that is present at Rock Garden and is notoriously difficult to control. Reducing the numbers of customers in the garden will reduce the overall sound reaching the resident's homes, yet this increases the clarity of voices that can be heard. This was demonstrated on the evening of 28<sup>th</sup> September 2013 when Mr Burrige commented he could hear every word Torbay Council Officers were saying during a visit to the beer garden. Generally during the day customers using the garden create less of a nuisance, although in part this may be because of elevated background levels masking customer's voices. The noise sails and reflective panels installed by Mr Brewer were proven on the evening of Saturday 27<sup>th</sup> to have had a negligible effect on the volume and served only to reduce the clarity of voices.

In considering these three questions I can only draw one conclusion. This is not a suitable location for a beer garden. Statutory nuisance has been established in one residents home closest to the beer garden and public nuisance is likely to be affecting residents in the wider vicinity of the beer garden. It is important to note one resident is content as the beer garden now closes at 10:00pm, this may be suitable for residents further away but not the residents closest to the garden. A view I could agree we after witnessing statutory nuisance at the property of Mr Gibbons and Mr Burrige.

- d) Music breakout has been addressed by the owner of premises with the assistance of a noise consultant over the summer and autumn of 2013. A range of measures were implemented to reduce music breakout from the building. This has largely been a success and no music breakout has been witnessed by Council Officers since 2013. Mr Burrige and Mr Gibbons on occasions report music can still be heard; most recently music was heard on the evening of the 3<sup>rd</sup> October 2014. It is suspected this is as a result of doors being left open or held open by customers entering and leaving from either the beer garden lobby door or the main entrance. Mr Brewer is aware there still might be a problem with music breakout.
- e) Noise from customers in the beer garden to date has not satisfactorily been addressed. In October 2013 Mr Brewer began seeking advice from experts to assist him. Although there is some mitigating circumstance the process of implementing the proposed noise sails has been frustratingly slow and ever evolving. Originally a specialise company was to undertake a feasibility report to ascertain the configuration and specification any noise canopy should be designed to. To date I have not see any reports or documentation establishing either the design or expected attenuation likely to be achieved.

It was not until July 2014 that work on the noise sails was started and not completed until 27<sup>th</sup> September; nearly 12 months after Mr Brewer began exploring remedial measures.

## **6. Recommendations**

- a) At the time of writing this report I'm not in a position to offer members of the licensing sub-committee any guidance. Currently negotiations continue with Mr Brewer and his legal representation and Mr Burrige and Mr Gibbons.
- b) Recommendations are likely to request considering reducing the operating hours of the beer garden and a range of additional licensing conditions.
- c) Recommendations will be circulated to the committee in good time before the hearing.

## **7. Appendices**

- a) Please see attached documents.



**Karl Martin**  
**Public Protection Officer**  
**Licensing and Public Protection**  
**Community Safety**  
**Torbay Council**

Appendix 1 – General Maps

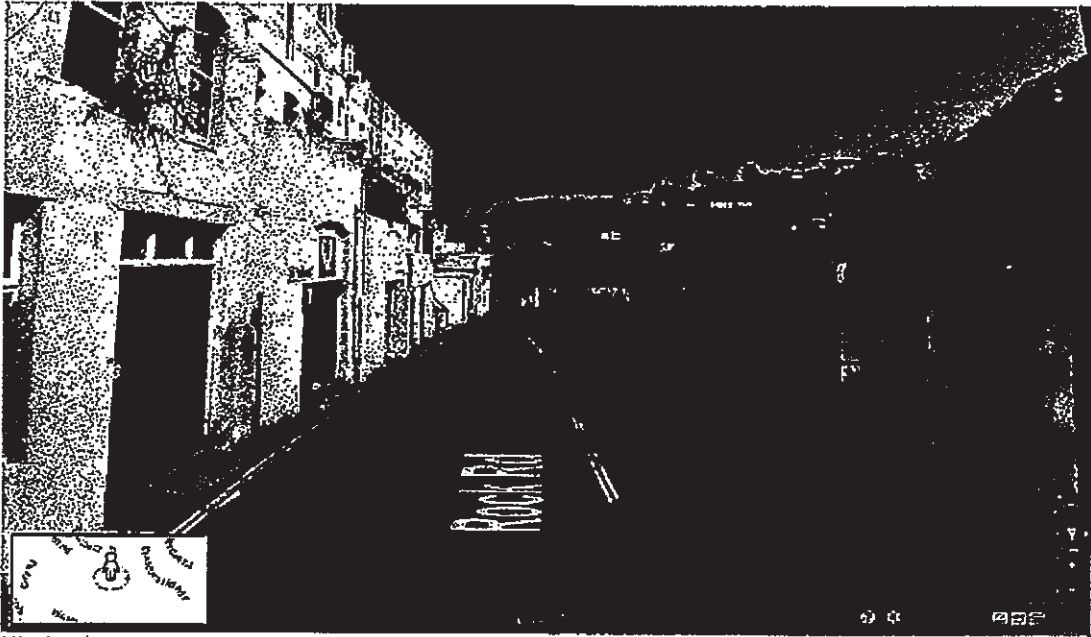


Fig1 – View of Rock Road, red boundary indicates Rock Garden below wall.

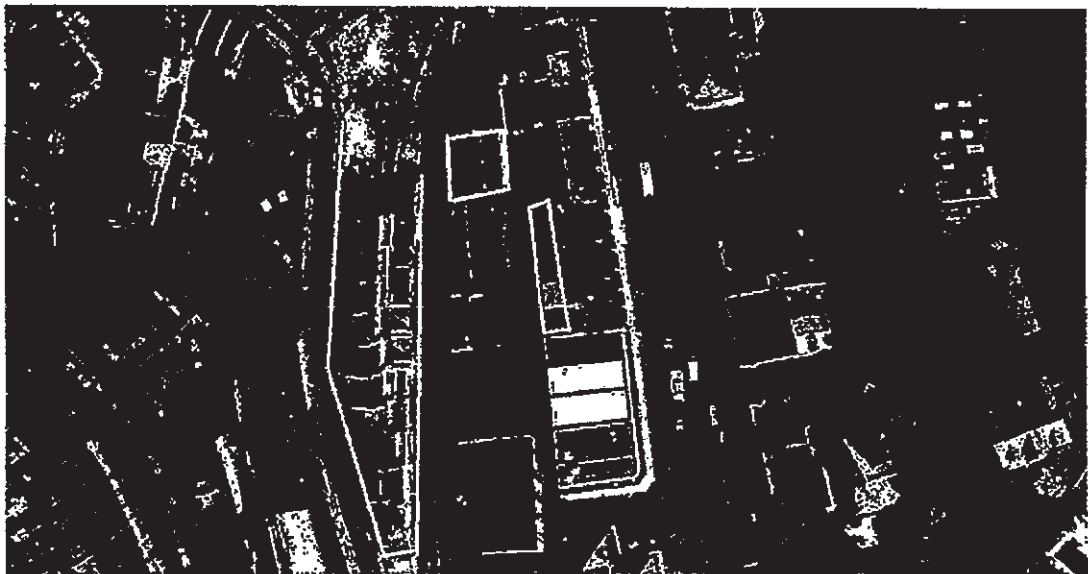


Fig 2 – Aerial view. Red box- Rock garden Boundary, Yellow boundary – Residential area

## Appendix 2 - Management Plan

### Management Plan.

In an attempt to limit any impact on neighbours, the following steps shall be taken.

- Numbers would be limited to 150
- No music will be played in the external area.
- Although the area is licensed until midnight on a Friday and Saturday, the area would be cleared at 11pm, to assist this furniture would start to be stacked and customers encouraged to move inside from 10.30pm.
- No clearance to waste or bottle bins will take place between 8pm and 8am.
- Windows and doors will remain closed after 8pm in line with the conditions within the license.
- During food and drink service at least one member of staff will be responsible for the outside area.
- During evenings when door staff are present, in addition to security on the front door, members of security will man the door to the external area at a ratio of 1:75 as advised.
- After the external area has closed to customers wanting to consume food or alcohol, a small area will be barriered off under the timber framed smokers canopy shown in the plan. This area would be used for a smoking area. No drinks would be permitted outside and the area would only be used when the exit is manned by security.
- Once the venue is closed all customers will leave via the front doors.
- Measures to limit noise that are stated within the license will be used including a more sedate "drinking up" period and requesting people to leave quietly.
- Any complaints of any nature will be reported to the manager and to the managing director.

Additional Information - P/2012/0883 (17.08.2012)



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2012-0883-506 (assessment Plan)



**TORBAY COUNCIL**  
 1 / SEP 2014  
 E1 . NEWLY /  
 IQ1 3500 SAFETY

Case Reference:  
 Community Safety, C/o Town Hall, Castle Circus, Torquay

**Nuisance Diary Sheet**

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Tel.	
Name and address of person / address being complained about		Start time	Finish time
Date	Description of incident / noise nuisance	How did the incident / noise affect you?	
17-8-14	PEOPLE IN GARDEN CAN HEAR THEM TALKING!	22-15	
21-8-14	PRESTO PARTY BINS BEING EXHAUSTED	5.30 AM	
21-8-14	WILLOW BINS BEING EMPTIED -	7:00 AM	
21-8-14	NEW SUN SHADES BEING INSTALLED		

FILMED!

Appendix 3



Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
22/8/14	9.30	-	Noise from garden (2 tables) after stairs have been put up - this noisy -	Hearing floor lamp closed windows - Filmed -
23/8/14	7.35 AM	-	Children in rock song - something Sarah filmed to show how noisy street traffic	Woke up -
23/8/14	5.50 PM	-	Loud groups under Aunty's - has been going on for a few hours now = Filmed to demonstrate noise from neighbour tables -	Can hear it through windows -
			FIRED AT 8.00 IN THE MANAGER + SECURITY STAFF POWER CABLES HUNG	CLOSED WINDOWS + TURNED UP TV
23/8/14	9.00 + 9.35	-	Noise from garden + got even foul filmed.	HAD TO CLOSE WINDOWS AND TURN TV UP!
24/8/14	11.00 PM		<del>NOISE FROM GARDEN</del> TROUVOO - CAN CLEARLY HEAR LYRICS - FILMED -	EAR PLUGS AGAIN!
25/8/14	6.30 AM	-	REFUSE BINS (ROADWORKS DICTA) COLLECTED K... REWAS STRONG BGM MAY BE LIVED HINERK A... STREET CLEANING MACHINE IN SWAN STREET	Woke up again - other bins. Filmed -
25/8/14	06.35			

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
26/8/14	06:30	-	REFUSE BINS BEING EMPTIED IN SEAM ST. FILMED.	Woke up -
28/8/14	06:45 AM	-	REFUSE BINS PHOTO TAKEN + ONE OTHER BUSINESS * FILMED	Woke up -
28/8/14	07:00 AM	-	BENT DELIVERY LORRY FOR ROCK CDR - WENT AWAY AS NO ONE ANSWERED DOOR	- MORE NOISE FILMED
28/8/14	07:30	-	MORE REFUSE COLLECTIONS - 2 BINS.	., ., FILMED -
30/8/14	9:35	-	NOISY GROUPS IN GARDEN, NOT ONE PERSON EATING - (FILMED) * (MOS - NOT UNDER AGREEMENT)	TURNED UP TV + SHUT WINDOW - IN TOP BEDROOM
30/8/14	10:45	-	GROUPS OUTSIDE ROOMS BY - SAO LAUBENBERG FILMED -	TOO NOISY - PARTIALLY EAR PLUGS TO SLEEP -
1/9/14	6:30	-	STREET CLEANER LORRY - FILMED	Woke up

SPOKE TO THE MANAGER (S) THIS MORNING WHO CONFIRMED THAT THAT HER 2 BINS EMPTIED EARLY C. 5.30 AM LAST WEEK AND 06.45 THIS WEEK - AND ASKED HER TO ARRANGE ALTERNATIVE FOR PRESTO BINS TO BE COLLECTED - INFORMED HER SENIOR MANAGERS AND THIS DIARY - (28/8/14)

\* 30/12/14 - MANAGER WAS TAKING PICTURES FROM THE BOTTOM OF GARDEN - UP AT OUR PREVIOUS -



**TORBAY COUNCIL**  
 1/ SEP 2014  
 EN . n . s . s . l . i . j .  
 TQ1 3580B SAFETY

Case Reference:  
 Community Safety, C/o Town Hall, Castle Circus, Torquay

**Nuisance Diary Sheet**

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Name and address of person / address being complained about		Description of incident / noise nuisance	How did the incident / noise affect you?
Date	Start time	Finish time			
			The Rock Garden 40-42-Swan Street Torquay TQ2 5ES		
17-8-14	22-15			PEOPLE IN GARDEN CAN HEAR THEM TALKING!	
21-8-14	5-30 AM	-		PRESTO PARTY BINS BEING EMPTIED	WAKE UP - FILMED (BUT DANK)
21-8-14	7:00 AM	-		WRECKAR BINS BEING EMPTIED -	WAKE UP AGAIN FILMED
21-8-14	09-45			NEW SUN SHADES BEING INSTALLED	

FILMED!

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
22/8/14	9:30	-	NOISE FROM CANISTER (2 TABLETS) AFTER SALES HAVE BEEN PUT IN THE SCISSOR	HEARD SCORE WORK (CLOSED WINDOW) - FILMED -
23/8/14	7:35 AM	-	CLEANERS IN ROCKS ON - SLEEPING GARAGE FILMED TO SHOW HOW AROUND LIGHT TRAILS	WOKER UP -
23/8/14	5:50 PM	-	LOUD GROUPS UNDER AWNING - HAS BEEN GOING ON FOR A FEW HOURS NOW - FILMED TO DEMONSTRATE NOISE FROM MESSY TABLES	CAN HEAR IT THROUGH WINDOWS -
			FIRES AT SODOR AIR TRAFFIC MANAGER + SECURITY STAFF (CAME OUT + QUIETENED THEM DOWN - CAPTAIN'S HARDS)	
23/8/14	9:00 - 9:35	-	NOISE FROM GARDEN + NOT EVERY FULL FILMED	CLOSED WINDOW - TURNED UP TV
24/8/14	21:00	22:00	EXCESSIVE NOISE FROM GARDEN DRUNKEN PEOPLE USING FOUL LANGUAGE	HAD TO CLOSE WINDOWS AND TURN TV UP!
24/8/14	11:00 PM	-	WINDOR - MURDER TO BLOW - CAN CLEARLY HEAR LYRICS - FILMED	EAR PLUGS AGAIN!
25/8/14	6:30 AM	-	REFUSE BINS (RED ONES BIGGA) (COLLECTED 11:00 RUMBY STR - ONE BIN MAY BEZIELED WITH HISSING AIR KICK OTHER BINS. FILMED	
25/8/14	06:35	-	STREET CLEANING MACHINE IN SWAN STREET	

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
26/8/14	06.30	-	REFUSE BINS BEING EMPTIED IN SWING ST. FILMED.	Woke up -
28/8/14	06.45 AM	-	REFUSE BINS PHOTO TAKEN + ONE OTHER BUSINESS * FILMED	Woke up -
28/8/14	07.00 AM	-	BERT DELIVERY LORRY FOR ROCK CON - WENT AWAY AS NO ONE ANSWERED DOOR	- MORE NOISE
28/8/14	07.30	-	MORE REFUSE COLLECTIONS - 2 BINS.	" "
30/8/14	9.35	-	NOISY GROUPS IN GARDEN. NOT ONE PERIOD ENTIRE - (MOST NOT USABLE AUDIO) (FILMED) *	TURNED UP TV + SHUT WINDOW - IN TOP BEDROOM
30/8/14	10.45	-	GROUPS OUTSIDE ROCK CON - BAD LANGUAGE FILMED -	TOO NOISY - PUT IN EARPLUGS TO SLEEP -
1/9/14	6.30	-	STREET CLEANER LORRY - FILMED	Woke up

SPOKE TO THE MANAGER OF THE MARRIOTT WHO CONFIRMED THAT THAT HER 2 BIRDS STARTED EARLY C. 5.30 AM. LAST WEEK AND 06.45 THIS WEEK - AND ASKED HER TO BRING A MATRICK NUMBER FOR PHOTO TAKING BINS TO BE COLLECTED - INFORMED HER OF NOISE COMPLAINTS AND THIS BIRDS (28/8/14)

\* 30 (12) 116 - MANAGER WAS TAKING PICTURES FROM THE BOTTOM OF GARDEN - UP AT OUR FRONT -

Have returned - 18/8/12

101 @ Devon and Cornwall - P.M.S. Police, etc



TORBAY COUNCIL

19 AUG 2014

Case Reference:

Community Safety, C/o Town Hall, Castle Circus, Torquay, TQ1 3DR

COMMUNITY SAFETY

**Nuisance Diary Sheet**

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Description of incident / noise nuisance		How did the incident / noise affect you?
The Rock Garden 40-42-Swan Street Torquay TQ2 5ES				
Date	Start time	Finish time		
17/7/14	06:45	-	UNRAPOR BIN COLLECTION SWASTIC	WAKE UP - CUTTH EMPLOYEES
18/7/14	8:45	-	ROCK GARDEN NOISEY WITH PARTY. FILMED - DIALECTIC TO LOG A COMPLAINT WITHIN 24 HRS WILL CALL IN MORNING FOR LOG NO 268 (19/8/14)	COPEL UNEMPLOYED WORKERS ON TV - EMPLOYED ON STORE
19/7/14	10:40	-	LOUW INTERIOR MUSIC THROUGH OUTSIDE BUILDING	FEMALE SILIPER 11.15 POLICE WENT OUT SIDE
24/7/14	7:25	DEVOH	CONTRACT WASTE COLLECTION - BOUGHT TORBAY RIGHT UP ST UNDER MY BEDROOM - FILMED	WAKE UP.

LOG NO 361  
20/7/14

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
24/7/14	7:30	-	A <u>OTHER</u> BIN LORRY ROUNDED SW AM STREET COLLECTED 2 BINS (WHITE LORRY AND A RED ONE)	FILMED
29/7/14	9:05	-	LARGE GROUP IN ROCKS AREA COLLECTING ROCKS	FILMED - TURNER - NO TV - SHOT WITH PHONE - NO TV
31/7/14	6:30 7:15 AM	-	BIN COLLECTION -	WOKED UP
31/7/14	7:35	-	BINS BEING DELIVERED OUTSIDE ROCK GARDEN (A LORRY LOAN) COLLECTED + DELIVERED	TURNER TV - SHOT WITH PHONE - HAD TO TURN TV VOLUME UP!
31/7/14	8:45	-	NOISE FROM GROUP IN GARDEN - FILMED CAK HERR CLEARLY EVERYWHERE -	TURNER TV - SHOT WITH PHONE - HAD TO TURN TV VOLUME UP!
1-8/14	20:30	21:00	LIVE MUSIC IN GARDEN	TURNER TV - SHOT WITH PHONE - HAD TO TURN TV VOLUME UP!
2-8-14	2:50	-	SECURITY CHIEF IN GARDEN RUNNING ROUND - FILMED - SAILS NOT WORKING	SHOT WINDOW TO REAR PAPER AT ALL - JUST IN REAR AREAS -
4/8/14	05:15 AM	-	3 BOTTLE SKIDS FROM ROCK GARDEN BEING EMPTIED (AFTER A MEETING WITH GARDENERS) NEW COMPANY TO THIS AT AN EARLY TIME	WOKED UP
5/8/14	06:10	-	MORE BINS BEING COLLECTED - SW STREET	WOKED UP (WITH EARPLUGS) - FILMED

\* IMPORTANT TO NOTE MAJORITY OF GROUP SATT WHERE SOUND SAILS WILL NOT BE PLACED

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
6-8-14	8.25-	-	WIRAPUN (AREA) COLLECTING BIRDS -	WOKED UP, WENT TO BED
7-8-14	05.55 AM	-	WIRAPUN AREA COLLECTING BIRDS - (PROF. PASSERILLIUM)	" " "
7-8-14	0.11.00 <del>8.45</del> PM	-	LARGE GROUPS IN GARDEN (2 UNDER ONE WINDOW) NOISE - (FILMED) CLEARLY HEAR BOOKED FOR 8.50 CONVERSATIONS -	TURNER UP TV - CLOSED WINDOW
8-8-14	6.30 AM	-	WIRAPUN COLLECTING BIRDS - FILMED	WOKED UP - WENT TO BED
8-8-14	21.00	22.00	LARGE NOISY GROUPS IN GARDEN	FILMED
8-8-14	22.30	23.30	LARGE NOISY GROUPS OUTSIDE FRONT OF PREMISES	COULDN'T SLEEP.
9-8-14	7.56 PM	-	Loud groups in garden - allowing noise to prevent work - FILMED AT VARIOUS TIMES DURING NIGHT	CLOSED WINDOWS - TURNED UP TV. SLEEPED TO 08.30
9-8-14	10.40	-	Loud audible noise from interior - loud groups outside - customers smoking / cleaning	CLOSED WINDOWS - FILMED
10-8-14	20.30	21.30	Loud noise from people in garden	CLOSED WINDOWS!

THANK GOODNESS - \* GARDEN CLEARED.

IT HAS TO BE NOTED THAT THIS TIME (AUG 9) ONLY 2 "SHARP SHARKS" ARE UP AND HAVING NO EFFECT AT ALL - THIS WILL BE TOO LITTLE TOO LATE - THE REASON WILL SOON BE OVER, TO BE REPEATED NEXT YEAR?



Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
11/8/14	6.30 AM	-	ROAD SWEEPER WORK ON UP+DOWN SUMAC ST	wake up -
12/8/14	6.30.	-	ROAD SWEEPER WORK ON UP+DOWN SUMAC ST	WAKE UP.
14/8/14	7.15	-	RUBBISH COLLECTION IN SUMAC ST - FILMED	wake up (can't sleep).
15/8/14	9.40	-	LOUD GROUP OF PEOPLE CLEAN BY HEAR EVERY WORD - PROVING THE CASE POINTING	WAKE UP WITH NOISE SLAMING DOOR TOWARDS UPON



TORBAY COUNCIL  
15 JAN 2014  
LICENSING SECTION

Case Reference:  
Community Safety, C/o Town Hall, Castle Circus, Torquay, TQ1 3DR

### Nuisance Diary Sheet

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Name and address of person / address being complained about		Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
[REDACTED]		The Rock Garden 40-42 Swan Street Torquay TQ2 5ES						
				30/1/13	10PM	-	EXCESSIVE NOISE FROM MUSIC, AND PEOPLE ARRIVING & LEAVING PREMISES. VIDEO EVIDENCE RECORDED.	HAD TO TURN VOLUME OF TV UP! (EVEN WITH CLOSED) DELAYED SLEEP TIME
				09/2/13	05.20		EXCESSIVE NOISE FROM COMMERCIAL WASTE DISPOSAL - IE. PICK UP OF GLASS WASTE	WOIKEN UP!
				10-12-13	21-42		GARDEN STILL OPEN AND BEING USED	
				13/12/13	8.30 PA		ROCK GARDEN - DOOR WERGED OPEN ONTO GARDEN MUSIC LOUD - (MAYBE A WALL OF SOUND - GRASSIE PEOPLE INTERNAL DOOR BANGING - STOOD PARKING)	HAD TO TURN UP TELEVISION -

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
14/12/13	7.50	-	POOR WEATHER OPEN (OVER STAY OF BARBEQUE HOODS) GROUP OF MEN SWERVING - OUTSIDE IN GARDEN (CLOSED)	
21/12/13	8.50 P.M.	-	NOISY GROUP IN GARDEN - RAISING INTERIOR / EXTERIOR NOISE. (FILMING) GARDEN CLOSED AT TIME BUT NOISE REVENING DOES NOT SHUT - STILL HEAR MUSIC	HAD TO TURN UP TELEVISION -
22/12/13	10.20 P.M.	-	PEOPLE STILL IN GARDEN DRINKING + KILLING FOOT MACHETS - CAME OUT + CLEARED IT WHEN I STANDING AT 10.20 AM	
23-12-13	05.20 05.28		COMMERCIAL WASTE COLLECTION OF BOTTLES TWO BINS EMPTED	WOKEN UP!
26-12-13	21.50		GARDEN OPEN AND BEING USED - PEOPLE ARE VERY LOUD AND NOISEY - CLOSED GARDEN AT 22.00	CAN HEAR PEOPLE SHOUTING AND DRIVING BANGING!
30/12/13	17.50	-	GROUP OF GAYS STARTING AND VERY NOISY - NO MANAGEMENT INTERVENTION (VIDEO OF GARDEN NOISEY OUTSIDE MAIN EXTERIOR SMOKING + SHOUTING. ONLY A FEW PEOPLE BUT COULD HEAR EVERYTHING. WHAT IS IT SOUND TO BE LIKE IN THE SUMMER?)	TURNED UP TELEVISION + SHUT WINDOWS
4/1/14	10.45 P.M.	-	VERY LOUD MUSIC INTERFERING WITH SLEEP ALMOST AS BAD AS IT WAS IN THE SUMMER	WOKEN UP - HAD TO WEAR EAR-PLUGS TO SLEEP
11/1/14	10.45	-		

\* ALL VIDEOS ARE FILMED ON CAM LEFT BY KARC MARQUIS FROM THE COUNCIL'S COMMUNITY SAFETY.

203078

"FILM ->"  
FOR THIS  
SHEET



TORBAY COUNCIL  
10 OCT 2014  
COMMUNITY NUISANCE  
Case Reference:  
Community Safety, C/o Town Hall, Castle Circus, Torquay, TQ1 3DR

COMMUNITY NUISANCE Diary Sheet

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Name and address of person / address being complained about		Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
[REDACTED]		The Rock Garden 40-42-Swan Street Torquay TQ2 5ES		10/9/14	9.00 PM	-	GARDEN WAS ALREADY PEOPLE. SAT UNDER NEW AVENUE, COULD HEAR THEIR PEOPLE'S CONVERSATIONS	' - CLOSED - WINDOWN -
[REDACTED]		[REDACTED]		"	10.45 PM	-	CLEARLY COULD HEAR MUSIC FROM INSIDE NOISEY GROUPS OUTSIDE + LOUDNESS - HEARING BOUND SITUATION "SIT UP" AS IT WAS FOR LOUD?	FILMED -
[REDACTED]		[REDACTED]		20.9.14	20.00	22.10	NOISEY PEOPLE IN GARDEN EVEN THOUGH UNDER SUN SHADES. BIG GROUPS OF LOUD PEOPLE DOOR STAFF TRY TO CONTROL BUT NOT MUCH GOING	FILMED - AFTER THEY HAVE SHOWER!
[REDACTED]		[REDACTED]		20.9.14	22.00	23.30	NOISEY PEOPLE OUTSIDE FRONT - SMOKING AND LEAVING PREMISES.	COULDNT SLEEP

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
22/9/14	05:45	-	THINK IT WAS DEWON COLLECTING WASTE COMMERCIAL BIN COLLECTION IN SWAN ST - BLUE DEFEAT LORRY, CAM INTO SWAN ST - FILMED COMMERCIAL BOTTLES COLLECTED FROM ROCK GARDEN	TWICE UP (WITH EAR PLUGS)
23/9/14	07:20	-	1 MORE BIN COLLECTED IN SWAN ST - SWAN ST DISRUPTIVE - ALL SAILS 'A' UP - TOWN NOISY	ANOTHER MORNING WOKEN UP TO SMASHING GLASS
25/9/14	7:00 PM	-	GROUPS NOISY DOWN TO 19 GROUP BUT CAN CLEARLY HEAR CONVERSATIONS - 'WON'T SAYS' -	COULD HEAR THEM 2?? ON CURB SIDE??
25/9/14	7:45	-	NOISY GROUP SWANERS IN GARDEN (ONLY A SECTION IS SERVICED) - OTHER HALF OF GARDEN - BLOCKED OFF. A LOT OF	HAD NERVE ALL AFTERNOON. - FILMED.
27/9/14			ROAD SWEEPERS VAN IN SWAN ST.	FILMED. TURNED VAN TO SWANING (SECURITY HAD TO STOP AND INTERVIEW)
28/9/14	06:30 AM	-	WINDOR COLLECTOR BINS (4) IN SWAN ST	WOKE UP -
30/9/14	06:25	-	BIFFA (TON DRESSING PASSEY) REFUSE LORRY	WOKE UP (WITH EARPLUGS)
2/10/14	05:50 AM		WINDOR COMMERCIAL WASTE IN SWAN ST	WOKE UP " " "
3/10/14	06:35 AM			WOKE UP AGAIN "

(NOT FILMED - NO SDCARD)

D

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
3-10-14	21:00	22:45	UNACCEPTABLY LOUD NOISE FROM PEOPLE IN GARDEN AND LEAVING AT FRONT, COULD HEAR MUSIC FROM INSIDE ALSO	HAD TO TURN TV UP COULDN'T SLEEP.
4-10-14	20:30	23:30	UNACCEPTABLY LOUD NOISE FROM PEOPLE IN GARDEN AND LEAVING AT FRONT, COULD HEAR MUSIC FROM INSIDE (ABLES "BOUNCE IN THE DEPT")	HAD TO TURN TV UP - COULDN'T SLEEP * SENT VIDEO FROM iPhone



Harry Brewer  
Rock Garden  
40-44 Swan Street  
Torquay  
Devon  
TQ2 5ES

Please reply to: Karl Martin  
**Licensing and Public Protection**  
Community Safety, c/o Town Hall, Castle Circus,  
Torquay  
TQ1 3DR

**My ref:** SRU/193776

**Your ref:**

**Telephone:** 01803 208025

**E-mail:**

**Website:**

**Date:** 12 September 2013

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Dear Mr Brewer

**Licensing Act 2003 and Environmental Protection Act  
Alleged Nuisance arising at Rock Garden 40-44 Swan Street Torquay Devon TQ2 5ES**

I write following a meeting at Rock Garden on the 11<sup>th</sup> September 2013 with you and David Walsh. Also present at the meeting was Craig Noble, Licensing Officer, Torbay Council. During the meeting we discussed the on-going noise complaints we have received in relation to noise breakout from amplified music emanating from within the premises and noise escaping from the beer garden.

I will first summarize my thoughts regarding live and amplified noise breakout from the premises. Observations by Steve Cox and me on Saturday 7<sup>th</sup> between 9-11:30pm indicate music breakout is occurring when the door from the premise to the beer garden is opened. As this door is not currently lobbied this is frequently causing the volume of music escaping to increase and this may be causing a statutory nuisance but I will come back to that point later in this letter.

The practicable choice in this situation is to build an acoustic enclosure in the form of a lobby that has two sets of doors ensuring that at least one set of doors is closed at any one time, though I accept on the odd occasions both doors will be open as customers move through the area. I believe a lobby could significantly reduce noise breakout of pre-recorded and live amplified music.

I will however, cautiously warn live music may be more problematic even with the installation of a lobby. On Saturday August 31<sup>st</sup> recordings made by a nearby resident suggests breakout out is occurring throughout the duration of the performance. A closed door to the beer garden appears to only make a marginal difference. I have spoke with Neil Carpenter who happened to be monitoring levels on this evening and his view differs from what the resident has recorded. I would suggest you continue to monitor live music performances for the time being.

It has been suggested by a number of sources some of the music heard by the complainants may have originated from other nearby premises. Recordings and visits to the area made by officers does not suggest this is the case. However without wishing to discuss other premises in detail, there are a number of premises along Fleet Street that are not complying with their licensing conditions and we are addressing this issues with the owners.

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If you require this in a different format or language, please contact me

Moving on to the beer garden, On Saturday the 7<sup>th</sup> is was the opinion of Steve Cox and myself that the noise levels experienced by a complainant could well be a statutory nuisance if they had been using their garden or had their windows open. Owing to the change of weather on this night and the evenings drawing in it wasn't possible to make a final judgment. Recordings made by a resident during warmer periods support the view a statutory nuisance may be arising from the beer garden reinforcing the view shared by Steve Cox and myself.

As we move into the winter months any nuisance may resolve itself until the return of warmer weather next spring. I welcome your positive attitude and willness to resolve the problem and I strongly suggest you use the winter months to put in place any engineering or management controls we discussed during our meeting.

I have summarised below the main points discussed during the meeting

1. Agreed to close the beer garden on Friday and Saturday nights by 11:00pm in accordance with the management plan submitted as part of your planning application;

*'Although the area is licensed until midnight on a Friday and Saturday, the area would be cleared at 11pm, to assist this furniture would start to be stacked and customers encouraged to move inside from 10:30pm.'*

2. Investigate the best possible means of installing a lobby at the entrance to the beer garden.
3. Remind staff and door stewards to actively manage unacceptable behavior in the beer garden.
4. Explore further possible engineering solutions to remedy noise from the beer garden.
5. Ensure you are fully complying with all conditions on your licence relating to public nuisance.

I will stress though I welcome your co-operation and invite you to respond to this letter with any remedies you have already implemented or propose I must advise you of the course action the Council will have to take if together we cannot find a suitable solution.

As you are aware we have a number of complainants or in other words a 'cohort of her majesty's servants' which may mean the nuisance from the beer garden could be a public nuisance. Effectively this means the matter may have to be referred to Torbay Council licensing sub-committee for their consideration by way of reviewing your premises licence.

As you aware the Council would present its evidence and you would be able to put your case forward with a right of appeal if the outcome is not favorable. The licensing committee could choose to reduce the operating hours of the beer garden and/or impose other conditions. Although I will be willing to broker a 'comprise' between you and the neighbours please however note, with such a large number of complainants it may not be possible to find a position that is acceptable to all parties.

In an addition if a statutory nuisance can be proven, then there is a legal obligation upon the department to either serve a noise abatement notice, or require within 7 days a written statement from you advising the department how you will abate that nuisance. Failure to provide this statement will result in the service of that legal notice after those 7 days have passed. Failure to comply with a Noise Abatement Notice is a criminal offence failure to comply with a noise abatement notice could result in a licensing review.



Please do not hesitate to contact me should if you would like to discuss the contents of the letter and I look forward to your reply.

Yours sincerely

Mr Karl Martin  
Public Protection Officer  
**Licensing and Public Protection**

cc: David Walsh, DPS, Rock Garden,  
cc: Licensing Department East, Devon & Cornwall Police HQ, Middlemoor, Exeter, Devon, EX2  
7HQ

Appendix 5



Please reply to: Mr Karl Martin  
Community Safety  
c/o Town Hall  
Castle Circus  
TORQUAY  
Devon  
TQ1 3DR

Mr. Harry Brewer  
The Royal Exeter Hotel  
Exeter Road  
Bournemouth  
Dorset  
BH2 5AG

My ref: U:001775/KJM  
Your ref:  
Telephone: 01803 208025  
Website:  
Date: 24 September 2013

Dear Mr Brewer

**Re Section 80 Environmental Protection Act 1990  
Statutory Noise Nuisance arising from Rock Garden, 40-44 Swan Street, Torquay, Devon,  
TQ2 5ES**

I write in reference to my letter dated 12<sup>th</sup> September 2013. In this letter I informed you the Council is duty bound to serve an abatement notice under Section 80(1) of the Environmental Protection Act 1990 should your premises found to be causing a statutory nuisance. I write to confirm noise levels have been witnessed by officers in a nearby residential premise at a volume giving rise to a statutory nuisance on the evening of Saturday the 21<sup>st</sup> September 2013.

On this occasion officers monitored noise levels for more than one hour and concluded the customer noise emanating from the beer garden and the frequent noise breakout from a live performance both gave rise to unacceptable interference with the complainant's enjoyment and amenity of their home. Both were deemed a statutory nuisance.

In addition the same complainant is also experiencing cigarette smoke entering their home. They have described frequently it feels like leaving with a smoker inside their home. This was not witnessed on the occasion officers visited. Cigarette smoke, I should warn, may be considered prejudicial to health and/or a nuisance if migrating into another property.

I understand it is already your intention to write to the department outlining action you have already taken and plan to undertake following the letter to you dated 12<sup>th</sup> September 2013, however it is now imperative that you write to us with the next 7 days from the date of this letter doing the same. I am legally bound to serve a Abatement Notice at the end of the 7 days if you have not replied in writing within this timescale or you are unable to demonstrate to the satisfaction of Torbay Council that the control measures you are to put in place will work and that the timescales proposed for the work to be completed are reasonable. You should be made aware that you do have a best practicable means defence in law, which I suggest you take legal advice on.

Rather disappointedly despite reassurance from yourself during our meeting on the 11<sup>th</sup> September 2013 that the beer garden will close at 11:00pm on Friday and Saturday nights, I witnessed myself the Beer garden was not cleared until 11:20 on Saturday 21<sup>st</sup> September 2013 and a video and statement provided by a complainant shows the beer garden was still in open at 11.15 pm on Friday the 20<sup>th</sup> September.

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If you require this in a different format or language, please contact me.

With regards to any proposed control measures I would strongly recommend that you consider closing the beer garden at an earlier time until it is possible to demonstrate proposed controls are proven effective and potentially to increase the level of supervision within that area.

Can you please ensure you respond by no later than 5:00pm on Wednesday the 2<sup>nd</sup> October 2013.

**Should you need to contact us please quote the reference number above.**

Yours sincerely



Mr Karl Martin  
Public Protection Officer  
Licensing and Public Protection

Cc David Walsh, Rock Garden, 40-44 Swan Street, Torquay, Devon, TQ2 5ES

*Please note that, apart from personal details subject to the Data Protection Act, information contained in this letter may be divulged to members of the public under the Freedom of Information Act 2000.*



1<sup>st</sup> October 2013

Dear Mr Martin,

Your ref: U:001775/KJM

I am writing in response to both your letter dated 24<sup>th</sup> September and also your visit on 28<sup>th</sup> September evening when you and your colleagues met with David Walsh (the manager at the Rock Garden).

Firstly and most importantly I would like to express that we as a company do have regard for our neighbours and are willing to invest time, money and effort into finding an ongoing solution to the problems highlighted. I do hope that all parties understand that these issues have not arisen through any mismanagement or disregard for either local authority or residents. As and when anyone directly affected by the noise has contacted us we have tried to return calls, in some cases unfortunately to no avail. We have no intention of ignoring either the problem or those it affects.

We have invested money into the area and as a result problems with vermin, vagrancy and drug use have significantly diminished along Swan Street. Some may say that the aesthetics of the street have also improved. This all in no way detracts from the issues in hand, the issues we will try to resolve.

The two problems as I understand them, are the occasional breakout of noise which occurs as people enter and leave the building and the effect noise from conversation in the garden is having. To attempt to resolve the problem of breakout of amplified music, a lobby will be installed as previously discussed. This will be started on Friday of this week (4<sup>th</sup> October) and aimed to be completed by the following Friday (11<sup>th</sup> October). It will consist of an enclosed double glazed double door lobby. I am hopeful that will help enormously. The design of which will be in line with our conversations with yourselves and which I believe the local authority is happy. I also invite you to come down and agree limits on the limiter within our amplified music arrangement. This has previously been set by Mr Neil Carpenter, so to lower levels, particularly the bass levels. I believe that David Walsh was asked about a limiter during your visit, he was not aware that it exists within the processor unit and cannot be altered without expert knowledge. Please let us know when is convenient.

I would point out that the Rock Garden is not using "DJ's". Our aim is to provide good local live music. This is aimed at customers who are looking for a different evening experience. One in which a conversation can take place. As such it is not our preference to have overly loud oppressive music.

Our garden is very important to our business and we are looking at a number of measures to limit the noise entering resident's properties. I really cannot stress enough that we do wish to manage this problem. On Friday and Saturday evenings there is always a member of security dedicated to the area. Anyone being overly loud in conversation is spoken to and if the problem persists, asked to leave. I believe there was one occasion when a table of customers were singing on a Saturday in August. This group were ejected from the premises after they did not quieten down. We will be carrying out a further refreshing training session with both security and bar staff as to the management of noise. The area in question is there as an amenity space for our customers to enjoy and a rare one in Torquay Town Centre. Any "rowdiness" will not be tolerated. There is no music played outside at anytime and the problems caused just seem to be from conversation. It has been reported back to me that although the noise level in the garden has not been "too bad" that the level on the road above has been higher. This seems to be as the noise bounces off of the hard surfaces as it emanates up from the garden. We are working with Mr Carpenter and ask for a little time to explore measures that we can take to mitigate what seems to be this natural amplification. This will involve use of professional and specialist materials and solutions. I do think these measures will help and ask that Mr Carpenter would be permitted to monitor levels on our behalf to see what works. We would naturally keep you closely informed on our progress.


I am also happy at present to close the garden at 11pm. I do apologise for there being a 15-20 minute extension past 11pm two weeks ago. There was miscommunication revolving around "drinking up" time out there. It will not happen again. I feel that the noise problems can be significantly eased, so to reach a level that is not any higher than any other comparable town centre on a Saturday night. We have also reduced the numbers allowed outside by some 20%.

You also made mention that a complainant felt smoke was entering his home although you did not witness it when you visited. Considering the distance from our garden, this surprises me, but please keep me informed.

I would have liked to write back in response to your letter earlier, however I did want to give definite dates of action for the lobby.

I would finally like to thank you for your suggestions on courses of action, and also your acknowledgement that there are other licensed premises that also may need to do more. In the meantime we are giving this our utmost attention and hope that measures taken now will allow not only customers enjoyment but also residents peace.

Yours sincerely,



H J Brewer  
Halix Ltd  
Rock Garden



Harry Brewer  
C/O Rock Garden  
40-44 Swan Street  
Torquay  
Devon  
TQ2 5ES

Please reply to: Karl Martin  
Licensing and Public Protection  
Community Safety, c/o Town Hall, Castle Circus,  
Torquay  
TQ1 3DR

**My ref:** SRU/193776

**Your ref:**

**Telephone:** 01803 208025

**E-mail:** Karl.martin@Torbay.gov.uk

**Website:**

**Date:** 2 July 2014

---

Dear Mr. Brewer

**Licensing Act 2003 and Environmental Protection Act 1990  
Statutory Nuisance arising from at Rock Garden 40-44 Swan Street Torquay Devon TQ2 5ES**

I am writing to inform you on Saturday 28<sup>th</sup> June 2014, officers from this department witnessed noise from customers in the beer garden and in the area outside the front door. The noise levels were significant enough to give rise to nuisance amounting to statutory nuisance. Torbay Council therefore has a legal duty to consider what action should be taken.

In my letter dated 24<sup>th</sup> September 2013 Torbay Council gave you the opportunity to supply this department with your proposals to prevent a recurrence of the statutory nuisance witnessed on the 21<sup>st</sup> September 2014 within 7 days, as is required by law. In your letter dated 1<sup>st</sup> October 2013 you informed us of your intentions, which we accepted and agreed during a meeting at Rock Garden on the 28<sup>th</sup> September 2013. It was agreed the works would be completed by summer 2014. This course of action mitigated the need to serve a noise abatement notice under Section 80 of the Environmental Protection Act 1990. Although Torbay Council would have anticipated that the work would have been completed by this date, it also accepts that there have been significant challenges to find a solution.

It was made clear in my letter dated 24<sup>th</sup> September 2013 that the Council is duty bound to serve an abatement notice if an agreement could not be reached. I consider as the works have now started and are expected to be completed within the next 2 weeks these works fall within the scope of the work agreed last year. Therefore it is proportionate that a noise abatement notice will not be served at this time.

It is my opinion that the situation is delicate and currently there is a fine balance between neighbours making new or further complaints if the beer garden was to open later. I would therefore strongly recommend that you do not open the beer garden past the current 10:00pm until an appropriate period of assessment is completed to establish the effectiveness of the sails and associated remedial works. I am concerned if the garden is open later than 10:00pm before a suitable assessment period has concluded you could run the risk of some additional residents complaining about nuisance whom currently appear to be comfortable with the beer garden closing at 10:00pm. Clearly we would have a duty to investigate any complaint, should they arise and may subsequently conclude either a Statutory or Public Nuisance is occurring.

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If you require this in a different format or language, please contact me.

Furthermore if the remedial measures do not remedy the nuisance the Council retains the statutory duty to serve a noise abatement notice should statutory nuisance be witnessed at a future date.

Please do not hesitate to contact on the above number if you wish to discuss the contents of this letter.

Yours faithfully



Kari Martin  
Public Protection Officer



Appendix B.

Please reply to: Mr Karl Martin

Community Safety  
c/o Town Hall  
Castle Circus  
TORQUAY  
Devon  
TQ1 3DR

THE COMPANY SECRETARY  
HALIX LIMITED  
THE ROYAL EXETER HOTEL  
EXETER ROAD  
BOURNEMOUTH  
DORSET  
BH2 5AG

My ref: U:001775/KJM

Your ref:

Telephone: 01803 208025

Website:

Date: 7<sup>th</sup> October 2014

Dear Mr. Brewer

I am writing to inform you that on Saturday 27<sup>th</sup> September 2014, Officers of this department witnessed noise amounting to statutory nuisance in the home of a nearby residence. The source of nuisance was identified as coming from customers using the beer garden of 'The Rock Garden' public house.

There are two letters I would like to refer you to, the first dated the 2<sup>nd</sup> July 2014 and the second 24<sup>th</sup> September 2013. In my letter dated 2<sup>nd</sup> July 2014 I outlined that a noise abatement notice would be served if further statutory nuisance was witness. It was deemed proportionate at this time to not serve a notice because the work fell within the scope of works agreed in September 2013.

The Council has a duty in circumstances where the authority is satisfied that a statutory nuisance exists, or it is likely to occur or reoccur an noise abatement notice must be served under Part III of the Environmental Protection Act 1990. Enclosed is an abatement notice severed under Section 79(1)(g) of the Environmental Protection Act 1990 requiring you to abate the nuisance forthwith.

Failure to comply or if you contravene the notice you are committing an offence and you may be prosecuted. Upon conviction, the maximum fine for offences in respect of a business premises is £20,000.

Should you need to contact me please quote the reference number above.

Yours sincerely

Mr Karl Martin  
Public Protection Officer  
Licensing and Public Protection

COPY

Please note that, apart from personal details subject to the Data Protection Act, information contained in this letter may be divulged to members of the public under the Freedom of Information Act 2000.

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if you require this in a different format or language, please contact me.





COPY

To: Halix Ltd

Of: The Royal Exeter Hotel, Exeter Road, Bournemouth, Dorset, BH2 5AG

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 Torbay Council being satisfied of the existence of noise amounting to a statutory nuisance under section 79(1)(g) of that Act at:

Rock Garden, 40-44 Swan Street, Torquay, Devon, TQ2 5ES

within the district of the said Council arising from VOICES OF PATRONS USING THE BEER GARDEN AT THE PREMSIES ("the nuisance")

HEREBY REQUIRE YOU as the person responsible for the said nuisance to abate the nuisance forthwith and thereafter neither to cause, permit or otherwise allow its recurrence.

THIS is a notice to which paragraph (2) of regulation 3 of the Statutory Nuisance (Appeals) Regulations 1995 applies and, in consequence, in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council the nuisance to which this notice relates is (injurious to health) (likely to be of a limited duration such that suspension would render the notice of no practical effect) (the expenditure which would be incurred by any person in carrying out work in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance).

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the Standard Scale, together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

If you fail to comply with this notice the Council may abate the nuisance and do whatever may be necessary in execution of the notice.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance.

(Signed) ..... Mr Karl Martin Public Protection Officer (The officer appointed for this purpose)

Dated: 7/10/14

Name, address and telephone number for all communications: Executive Head, Community Safety, Torbay Council, c/o Town Hall, Castle Circus, Torquay, Devon TQ13DR Telephone: 01803 208025

N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with the date of service of the notice. See notes on the reverse of this form.

The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:- Appeals under section 80(3) of the 1990 Act 2NB Ehp01/EPAAct1990 - S.80 - Noise

# Agenda Item 6

## Appendix 4

4 October 2014

Executive Head of Community Safety  
Torbay Council  
Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

Subject: Rock Garden, 40 - 44 Swan Street, Torquay TQ2 5ES

Dear Mr Williams

Further to the recent notification in respect of the review of the premises licence for the above establishment, I wish to make representation of the impact that the licensed premises has on my quality of life.

I have elected to break down my grievances into individual points

### **Noisy Patrons (18:00 - Late)**

I believe the volume of noise from the premises, especially the beer garden to be excessive and tends to escalate with the level of alcoholic consumption, this noise includes a high level of foul language that can be clearly heard from within the boundary of my home, even with all of my double glazed uPVC windows closed. The licensee and their representatives of the above premises do not appear to be able to control their patrons and fulfil their obligations to be a good neighbour.

Please note that due to being at work during normal office hours, I am not able to make representation about the level of noise from the beer garden during the day.

### **Music Levels (Live & Recorded) (21:00 - Late)**

The volume of the music from within the premises is particularly bad and it is questionable if it is appropriate for a licensed premises that directly adjoins a residential area be a suitable venue for holding a licence for live music performances. I do not believe that any level of sound proofing is going to help eliminate noise nuisance from the music within the venue due to the fact that patrons are constantly traversing from within the premises to the outdoor space (beer garden) and vice versa.

**Waste Collections (05:30 - 08:00)**

The proprietors have shown a complete lack of respect in their obligation to be a good neighbour, by continuing to have their waste collected at unsociable hours, the emptying of glass bottle bins at times as early as 05:30 in the morning is completely unreasonable and avoidable, yet the problem continues to be an issue which the management have failed to address.

This level of noise affects my ability to have the windows to my home open and has caused irregular sleeping patterns which greatly impaired my ability to perform my job effectively due to a lack of quality sleep.

I resent the fact that I am no longer able to enjoy my home, and feel that I am being driven out of the area due to a lack of action being taken as a result of various noise diaries and complaints to the non-emergency police service.

I believe that a beer garden situated so close to a residential area is a bad idea and is likely to continue to have a negative impact on the local residents.

Sincerely yours,

# Agenda Item 6

## Appendix 5

### Representations for licensing review:

Mr Harry Brewer is a Director of Halix Limited the premises licence holder. He would like to express his sincere apologies that his neighbours have felt the need to submit an application to review the premises licence for the Rock Garden. Mr Brewer opened the Rock Garden in June 2013 and in accordance with the permitted use under the planning permission used the garden area of the premises until midnight.

Mr Brewer has been aware that his neighbours have been concerned with the level of noise from customers in the garden and music from inside the premises since mid August 2013. However it was not until September that he was made aware of the extent of complaints. He has since then endeavoured to work with the Environmental Health Officer to address those concerns, including meeting with some of his neighbours. Early on in the discussion with the Environmental Health officer he voluntarily agreed to close the garden at 9.30pm and then 10pm and reduce the capacity in the garden from 150 to 100 persons, which was in place by October 2013 previously in September it had been reduced to 11pm. In addition an SIA security guard was specifically deployed in the Garden. Signs were erected to ask customers to be mindful of the neighbours. There were also issues raised about the emptying of glass bins prior to 9am this was immediately addressed. The collection of waste early in the morning was raised earlier this summer and Mr Brewer immediately addressed that by changing supplier for the collection of his waste ensuring it was collected later in the morning after which he received no further complaints.

The outside garden area is in a unique position. It has been described by the Environmental Health Officer as akin to an Amphitheatre whereby the applicant for the review, who lives in a property which is high above the garden, hears the conversations of those in the garden at a higher volume than if you were standing in the Garden itself. The Environmental Officer describes that as a "phenomenon." Indeed in the application for the review it is clearly stated by the applicant that he was "amazed we could hear her conversation with colleagues standing next to her." It is important to understand the context of the complaint because the Rock Garden is well managed and the premises licence holder has taken all reasonable steps to address the complaints about noise.

With regard to the noise from amplified live music being heard this was addressed by adding a lobby to the rear of the property, which was completed towards the end of October 2013. Further relocating the stage to a different part of the premises where the bands played (from the mezzanine to the ground floor and as far from the rear garden as possible), as well as changing position of the speakers. Subsequently Mr Brewer was under the impression that nuisance from amplified music was no longer a problem. The Environmental Health Officer has confirmed recently they had not subsequently witnessed any noise nuisance from music and their issue was only with the level of noise from customer using the garden.

Mr Brewer was made aware of complaints about amplified music after these works but on the dates complaints were made no live music was taking place at the Rock Garden but was taking place at another nearby licensed premises.

Mr Brewer engaged a noise consultant. Noise monitoring equipment was placed in the Garden. He attempted to contact the applicant to arrange for noise monitoring to be carried out in his flat. He left several messages on an answer phone but the applicants did not get in touch with him, so this could not be done, which is extremely regrettable. As the Garden was not in much use during the Winter and early Spring months and access to the neighbours property was not forthcoming, it made an assessment of what steps to take to prevent the nuisance of conversation coming from the Garden, that much harder. Mr Brewer does not recall any complaints about noise from the garden from October 2013 to April 2014. The consultant recommended erecting a frame with acoustic "sails" to deflect the noise. Those works were completed in October 2014 delays occurred because of the experimental nature of the work. They were completed in phases as different materials were tried as well as different positions for placement of the "sails."

The cost of what has been undertaken so far has been in excess of £15 000, which does not take into account the loss of income from reducing numbers in the garden and closing it earlier than the

premises close. The level of investment to address the issue of noise shows Mr Brewers commitment as a responsible licence holder, taking appropriate and proportionate steps to promote the licensing objectives. This is not someone who has ignored the problem. It is however, a "unique garden", "a phenomenon." The issue of noise here is entirely different from a complaint about noise from a poorly managed licensed premise.

Blake Morgan LLP solicitors for the premises licence holder.

9<sup>th</sup> October 2014

# Agenda Item 6

## Appendix 6

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

1 October 2014

Dear Sir/Madam

**The Rock Garden, 40-44 Swan Street, Torquay, TQ2 5ES**

I refer to an application for the Review of the Premises Licence in respect of the above named premises, submitted by Mr Stuart Gibbons and Mr Daniel Burrige.

My Police Licensing Officer, Mrs Julie Smart, has conducted research of all police computer systems in relation to this premise and has provided a breakdown of this information on the attached sheet.

For your information, Premises Licence Number PL0576 was transferred to Halix Ltd on or around the 2 December 2010, and therefore our crime records have been searched since that date. However in respect of Storm logs and Form L10's, new police systems have been introduced in the last two years and therefore information has only been provided since the introduction of those systems.

In light of the attached information, the police are satisfied that the premises are meeting the Licensing Objectives the Prevention of Crime and Disorder, the Protection of Children from Harm and the Promotion of Public Safety.

In relation to the Licensing Objective the Prevention of Public Nuisance the police have no other information in relation to this issue, except the logs detailed on the attached sheet, and I therefore consider that the Licensing and Public Protection Team of Torbay Council are the appropriate authority to deal with this matter.

[licensingeast@devonandcornwall.pnn.police.uk](mailto:licensingeast@devonandcornwall.pnn.police.uk)

Please be advised that my Police Licensing Officer, Mrs Julie Smart, will not be attending the hearing unless the Licensing Authority specifically request her attendance.

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

# Agenda Item 6

## Appendix 7

### THE ROCK GARDEN, TORQUAY

Licence transferred to Halix Ltd on or about 02/12/10.

#### Storm Logs 10/08/13 – 15/09/14

Date	Time	Log No	Caller	Issue	Action Taken
20/07/14	08:05:01	0361	Mr Burridge	This is an ongoing problem with live music from sig. It can happen each day of the week but it worse on weekends in that the volume is higher. They have been reporting to EHO and have sound monitoring equipment but have been informed to keep advising police as well. Caller was unable to get through last night	No action taken by police as caller was reporting a issue that was not occurring at the time of the call.
19/07/14	08:50:03	0268	Mr Gibbons	Ongoing issue. This has been going on for a year, gets worse at weekends but not restricted to that. Is affecting callers well being. He has spoken to EHO who have asked him to contact police to help build a case. It's mainly the outdoor garden at the location. Garden closes at 10 pm but they then just move to the front of the premises. Pub closes between 12 and 0100 hrs.	PC 6896 contacted caller and advised that the police do not deal with noise but that he would monitor premises the following weekend and submit L10's for the council if applicable. No L10 received by Licensing.
12/07/14	22:08:10	0904	Mr Burridge	The caller is keeping a diary for EHO but has been told to log with police if it gets really bad at any time. Excessive amount of noise from the open air tonight.	PC 6896 CULL updated log – I was in Rock Garden at the time of this call and the garden area was closed and no one was in it whatsoever.
28/06/14	20:57:37	0892	Mr Burridge	Noise complaint. This has happened before, things are getting worse. Happening to all in the area. Have to close windows, have to move flats and going into another address as can not hear the TV. Licensed until 0000, business owner has shut at 2200 previously to keep noise at an acceptable level for those in the area.	Request for any available units to attend, but none available. Log closed. Julie Smart sent email to Mandy Guy at Torbay Council advising her of log.
14/06/14	22:13:55	1038	Mr Gibbons	Caller states there is a lot of noise coming from sig address. Normally its loud but tonight they have the doors open and it is extra loud. RP states they have a 'gentlemans agreement' with the local council to close the outdoor area at 2130 and tonight it was closed at 2200.	Advised caller he needs to contact EHO. Log closed. Julie Smart sent email to Karl Martin and Dave Walker at Torbay Council at Torbay Council advising of log.



31/08/13	23:13:29	1198	Male A	Very loud noise from beer garden and live music. Caller states ongoing problem which is worse than ever this evening. Caller has been in contact with council who have advised him to also contact the police.	Log closed.
10/08/13	21:55:18	1016	Male A	Music from garden of pub. Caller advised re licensing and he is going to contact the council on Monday re this. He is unsure whether the licence is being breached or not and would appreciate contact from from NPT to discuss further.	Wrong telephone number on log so unable to contact caller.

**Crimes Recorded at The Rock Garden from 02/12/10 to 15/09/14.**

Date	Time	Crime Ref No	Details of Offence	Action Taken
12/07/14	1230 hrs	CR/089526/14	Theft of a pedal cycle.	Filed undetected.
01/02/14	2130 hrs	CR/035355/14	Theft (mobile phone).	Filed undetected.
30/11/13	2200 hrs	CR/068597/13	Theft (mobile phone).	Filed undetected.

**Forms L10's submitted by police officers to Licensing Department from October 2012 to 15/09/14.**

Date	Time	Officers comments	Action Taken
08/08/14	2157	Routine licensing visit. No issues identified.	No action taken by Licensing Department.
23/06/14	0240	Police called to the Rock Garden via Nitenet as they had ejected a male from the premises who, whilst outside, was becoming angry and aggressive with staff and members of the public. On police arrival, male was arrested for a Section 5 Public Order offence. Police officers attending stated that door stewards were both wearing their SIA licenses and dealt with the situation well and in a professional manner. On 12/09/13 the male was convicted of the Section 5 Public Order offence.	No action taken by Licensing Department.