

TORBAY COUNCIL

Briefing Report No:

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Premises Licence in respect of Arena Torquay, 39-41 Torwood Street, Torquay

Wards Affected: **Tormohun, Torquay**

To: **Licensing Sub Committee**

30 May 2023

Contact Officer: **Julie Smart**

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1. Key points and Summary

- 1.1 To consider and determine an application for a new Premises Licence, in respect of the Premise detailed above.
- 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 matter must be considered on its merits, having received details of the issues arising either at a hearing or by written Representation. A decision must be made, having considered the Representations, either:-
 - (a) to grant the licence subject to
 - (i) such conditions as are consistent with the submitted operating Schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under Section 19, 20 or 21 be included in the licence;(Such conditions may differ in respect of different parts of the Premises and/or different activities).
 - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
 - (c) to refuse to specify a person in the licence as the Premises Supervisor;
 - (d) to reject the application.

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

2. Torbay Council Cumulative Impact Assessment

- 2.1 The premises subject of the application is situated within a Torbay Council Cumulative Impact Assessment (CIA) area.

The Torbay Council Cumulative Impact Assessment 2024-27 states:

“Cumulative Impact has been used a term to describe the stress that a large number of licensed premises can have on crime and disorder, nuisance and the demand on local services. The guidance describes cumulative impact as ‘the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area’. It is often not that licensed premises on their own are operating in a way that is detrimental to the licensing objectives, but it is the accumulation of the premises and the people attending them that creates the increased problems and demands on services.”

The Cumulative Impact Assessment creates a rebuttable presumption that applications for a new premises licence or club premises certificate or the variation of an existing licence or certificate in these area will normally be refused where:

- Representations have been received and it is anticipated that the application will add to the problems of crime and disorder or/and public nuisance in these areas.
- The applicant has been unable to demonstrate that, within their operating schedule, there will be no significant negative cumulative impact on one or more of the Licensing Objectives.

It is recognised that pubs, nightclubs, restaurants, hotels, theatres and other clubs all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. Proper regard will be made to those differences and the impact they are likely to have on the local community where the amenity of local residents is being placed under severe pressure.

The Licensing Authority will consider the locality and local trading environment when assessing applications. For example, while a large nightclub or high-capacity public house might add to the problems, a small restaurant or theatre may not.

3. Application

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

A brief description of the application, is as follows:-

The sale of alcohol by retail for consumption on the premises between 1000 and 0300 hours Monday to Sunday.

Provision of Plays, indoors only, between 1000 and 0000 hrs Monday to Sunday.

Provision of Films, indoors only, between 1000 and 0000 hrs Monday to Sunday.

Provision of Indoor Sporting Events between 1000 and 0000 hrs Monday to Sunday.

Provision of Boxing or Wrestling, indoors only, between 1000 and 0000 hrs Monday to Sunday.

Provision of Live Music, indoors only, between 1000 and 0300 hrs Monday to Sunday.

Provision of Recorded Music, indoors only, between 1000 and 0330 hrs Monday to Sunday.

Provision of Performances of Dance, indoors only, between 1000 and 0000 hrs Monday to Sunday.

Provision of Late Night Refreshment, indoors only, between 2300 and 0300 hrs Monday to Sunday.

Opening hours of the premises between 1000 and 0330 hours Monday to Sunday.

The Applicant has also requested "On New Years Eve from the close of business on New Years Eve to the opening of business on New Years Day" in respect of all the above activities and the opening hours.

The Applicant has given the following description of the premises: -

"The premises will be used as a mixed entertainment venue, not a nightclub, with ancillary bar/lounge space. The venue area will host a range of entertainment such as concerts, comedy nights, record fairs, exhibitions, private event hire, wrestling/boxing, film, basically anything related to the entertainment genre. We will also be encouraging new musicians and artists and helping them to perform along with under 18 club nights. The bar/lounge will be open to the public, available for hire or open for specific events and to support the main function room on large events as required. We would like to serve food whenever open and also anticipate operating hours varying between 10.00 hr – 03.30 hrs. We would seek a 1200 capacity as although the space can accommodate more people this figure would comply with the fire escape capacity."

The plan accompanying the application is shown in Appendix 2.

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

We have received a Representation from Devon and Cornwall Police in respect of a reduction in the opening hours on Sundays to Thursdays to 0200 hrs, with the sale of alcohol finishing at 0130 hrs on these days, and the addition of further

conditions to the licence. The Applicant has indicated that he agrees with the recommendations of the Police. A copy of this agreement is shown in Appendix 3.

We have received Relevant Representations from Mr Thomas West, Environmental Health Officer, 10 Interested Parties who oppose the application, and 2 Relevant Representations from Interested Parties who support the application. These Representations are shown in Appendix 4.

No other Relevant Representations have been received from any other Responsible Authority or Interested Party.

- 3.3 Copies of all Representations were forwarded to the Applicant on Friday 10 May 2024. Later that day the Officer received an email from the Applicant's Representative indicating that, having considered the Representations, the Applicant has decided to further reduce the hours sought as follows:

Live Music 1000 – 0000 hrs Monday to Sunday
Recorded Music 1000 – 0130 hrs (last 30 minutes to be ambient music for the egress of persons) Monday to Sunday
Late Night Refreshment 2300 – 0100 hrs Monday to Sunday
Sale of Alcohol 1000 – 0100 hrs Monday to Sunday
Opening Times 1000 – 0130 hrs Monday to Sunday

A copy of this email is contained in Appendix 5.

- 3.4 The Authority is required to conduct a hearing under the provisions of Section 18(3) unless all parties agree that this is not necessary.
- 3.5 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representation and the procedure to be followed at the hearing.
- 3.6 If the application is refused, in whole or in part, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the Applicant.
- 3.7 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 2(1) of Schedule 5 to :-
- (a) The holder of the licence against any decision
 - (i) to impose conditions on the licence, or
 - (ii) to take any step to exclude a licensable activity or refuse to specify a person as Premises Supervisor.
 - (b) Any person who made a Relevant Representation who desires to contend
 - (i) that the licence ought not to have been granted, or
 - (ii) that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions or taken any step to exclude a licensable activity or refuse to specify person as Premises Supervisor.
- 3.8 Following such Appeal, the Magistrates' Court may:-

- (a) dismiss the appeal,
 - (b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
 - (c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,
- and may make such order as to costs as it thinks fit.

Rachael Hind
Regulatory Services Manager (Commercial)

Appendices

- Appendix 1 Relevant sections of the application form
- Appendix 2 Plan of the Premises
- Appendix 3 Agreement reached between Devon and Cornwall Police and the Applicant
- Appendix 4 Representations from Environment Health and Interested Parties
- Appendix 5 Email from Applicant regarding a reduction in hours for activities

Documents available in Members' rooms

None

Background Papers:

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

- Torbay Council Licensing Policy 2021-26
- Torbay Council Cumulative Impact Assessment 2024-27