

Briefing Report No:

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Variation to a Premises Licence in respect of Breakwater Bistro, Berry Head Road, Brixham, TQ5 9AF

Wards Affected: **St Peter's with St Mary's**

To: **Licensing Sub-Committee**

On: **08 August 2024**

Contact Officer: **Carrie Cottell**

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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 Variation to a Premises Licence.
- 1.2 The application relates to all the Corporate Priorities within the Community Plan.
- 1.3 The matters raised relate to the Licensing Objective “The Prevention of Public Nuisance”.
- 1.4 The matter must be considered on its own merits having received details of the issues arising either at a hearing or by written Representations if all parties have agreed that a hearing is not necessary. Having regard to the Representations and issues arising, a decision must be made to take such steps as are appropriate for the promotion of the licensing objectives. These are:-
 - (a) to modify the conditions of the licence, or
 - (b) to reject the application in whole or in part.

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

- 1.5 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 34 of the Licensing Act 2003 (hereinafter referred to as 'the Act') for a Variation to a Premises Licence. Details of the application are shown in Appendix 1. Only the relevant pages of the application are shown.

A copy of the Plan of the Premises showing the new extended balcony area is shown at Appendix 2.

A brief description of the proposed Variation is as follows:-

- To amend the Plan of the Premises to increase the size of the external balcony area.
- To remove one condition from the licence. The condition to be removed is:

Annexe 2 – The Prevention of Children from Harm – Condition 1:
“Regular ID checks shall be carried out and only current photocard driving licence and passports shall be accepted as ID.”

- For Additional Conditions to be added to the Licence, as set out on pages 6-7 of the Variation application found at Appendix 1

2.2 A copy of the current premises licence showing the licensable activities, timings and conditions is shown at Appendix 3 of this report.

A copy of the current plans of the premises is shown at Appendix 4 of this report.

The exemptions under the Live Music Act 2012 apply to this licence.

2.3 Torbay Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 35(1) of the Act but is unable to issue the Variation to the Premises Licence, as relevant Representations have been received from Interested Parties. The Licensing Authority is also satisfied that the Representations were received within the appropriate time-scale, have not been subsequently withdrawn, and are not vexatious or frivolous.

We have received 2 representations from Interested Parties in relation to the Licensing Objective “The Prevention of Public Nuisance”. These are shown at Appendix 5 of this report.

There have been no other Representations received from any other Interested Party or any Responsible Authority, other than that mentioned above.

2.4 The Licensing Authority is required to conduct a hearing by the provisions of Section 35(3) unless all parties agree that this is not necessary.

2.5 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representations and the procedure to be followed at the hearing.

- 2.6 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.
- 2.7 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 4(2) of Schedule 5 to :-
- (a) The applicant for the variation of the licence against any decision to modify the conditions
 - (b) Any person who made a relevant representation in relation to the application who desires to contend
 - (i) that any variation made ought not to have been made, or
 - (ii) that, when varying the licence, the Licensing Authority ought to have modified the conditions of the licence or ought to have modified them in a different way.
- 2.8 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

Appendices

Appendix 1	Relevant sections of the application form.
Appendix 2	Copy of the revised external Plan of the Premises
Appendix 3	Copy of the Existing Licence
Appendix 4	Copy of the Existing Plans
Appendix 5	Representations from 2 Interested Parties

Documents available in members' rooms

None

Background Papers:

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

The current Premises Licence for the above Premise.

Torbay Council Licensing Policy 2021 - 2026