

Memorandum

To:	From	: Community Safety
c.c	Contact	: Mr Karl Martin
c.c.	Ext	: 01803 208025
c.c	My Ref	: 1ZV SRU No: 226898/KJM
For the attention of: Licensing Steve Cox	Your Ref	:
	Date	: 7 March 2016

Subject: Premises– Licensing Act 2003

**Premises Name & Address: Bolton Hotel, Bolton Hotel, New Road,
Brixham, Devon, TQ5 8LT**

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

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

1. I wish to object to the above named application as I do not believe the application promotes the licensing objective 'Prevention of Public Nuisance'.
2. The Bolton Hotel is situated at the junction of Bolton Street and New Road, Brixham. Please see appendix 1.
3. The surrounding area can be described as mixed use. Bolton Street and New road largely comprise of buildings occupied by business on the ground floor with over living accommodation on the floors above. Elevated above the Bolton Hotel, are streets which are predominately residential accommodation.
4. Appendix 1 figure 2 shows not the nearest residential accommodation but the two areas of high density residential zones.
5. The Bolton hotel is owned by Punch Taverns and Pub solutions act as an agent to install tenants to run the premises whom apply to be the DPS whilst Punch retains the licence. In this circumstance the DPS is not just the person who authorises the sale of alcohol but is an individual who manages the pub for personal gain.

6. A representation received by an interested party describes the area like a 'bowl' which is a fairly accurate simile. The Bolton hotel sits at the confluence of two former river beds. As a consequence the premises are situated at the lowest point relative to the surrounding area which is flanked by former water cut cliffs. Residential properties are built on these cliff elevated above the Bolton Hotel. Appendix 1 fig 3 illustrates the area around the Bolton Hotel. In terms of noise, sound emanating from the Bolton will propagate away from the premises and whilst some sound will be absorbed by the building most will be reflected off producing prominent reflections. The majority of sound waves will diffract around the cliff exposing the house situated on top exposing them noise that may be considered unacceptable.
7. Fig 4 seeks to demonstrate how a given noise source will attenuate over a known distance. The red circles have been plotted 10m apart. Assuming live music inside the pub is playing at 95dB(A), the diagram demonstrates after an initial loss of 24dB(A) due to absorption of the building for every doubling of the distance from the premises there is approximately a 3dB(A) attenuation. At a distance of 70m noise has reduced to 54dB(A). At times the applicant seeks to have regulated entertainment the background noise in the area surrounding the Bolton Hotel would be expected to be around 45dB(A). Regulated entertainment at 70m from the premises would therefore be nearly 10dB(A) above background levels and at this level music would be audible. Numerous other factors need to be taken into account to quantify the likelihood of noise complaints occurring but the figures show there is sufficient risk of noise complaints. The Council has received 7 separate noise complaints since 2007 (see appendix 2, Fig 1) further enforcing future complaints are likely. The applicant needs to carefully consider how they intend to manage noise breakout.
8. Historically voices from patrons have formed part of noise complaints from this premises, specifically from patrons using the beer garden and smoking on the street. One evening in September 2013 this effect was observed from Saxon heights a block of flats some 50m away where voices from patrons using the beer garden could clearly be heard and formed part of a complaint received by the Council at the time. Advice was given to the DPS regarding controlling patrons using the beer garden late night.

I raise this concern as the applicant needs to carefully consider how noise from customers will be managed if the proposed variation is granted as applied.

9. Applicants are encouraged to consult with all responsible authorities prior to submitting an application:-

'In order to reduce the risk of relevant representations and the cost and delay of a contested hearing, applicants are strongly recommended to consult with the relevant Responsible Authority...'

Licensing Statement of Principles, Torbay Council, 2016-21, s3 p14

Unfortunately the applicant has chosen to disregard this advice leaving little option but to submit this representation. I raise some doubt whether the applicant considered at all the Licensing Statement of Principles when making their application.

10. Torbay Council's Licensing Policy leans towards refusing an application beyond 11pm in a residential area unless remedial measures can be demonstrated:-

'There will be an assumption however that Licensed Premises in residential areas, or where there is proximity to residential properties, will only be allowed to undertake Licensable Activities until 11pm unless detailed consideration and mitigation measures have been

proposed to address those concerns. A simple application with no supporting material can be expected to be refused, where relevant representations have been received.'

Licensing Statement of Principles, Torbay Council, 2011, p37-38

Though this premises already operates beyond 11:00pm, this does not exempt them from the policy if they chose to further extend operating hours. The surrounding environs contain a significant enough density of residential accommodation for this requirement to apply and the applicant should consider what is required from them when making an application. I have found no evidence in this application that the applicant has considered further mitigations measures.

11. The license holder intends to finish live music and recorded music at 1:00am but intends to remain open to the public until 3:00am. It is pleasing the applicant recognises live music and recorded music may not be workable until 3:00am but I consider it unrealistic a premises will remain open to the public on a Friday and Saturday night without any regulated entertainment between 1:00am – 3:00am. 'Background Music' is not licensable but the concept is rarely understood by licensees. Though the licensing Act 2005 offers no definition the following two separate definition may offer committee members some guidance:-

'music of any kind that is played while some other activity is going on, so that people do not actively attend to it'

Or

'music that is intended as a background to an event, production or venue. It aims to be unobtrusive so not to distract or divert the attention of the visitor or viewer'

Does the applicant understand the distinction or has an error been made in the application? As the applicant did not consult prior to submitting this application these questions can no satisfactorily be answered.

12. Part M of the application offers applicants an opportunity to state additional steps they intend to take to promote the licensing objectives. The applicant has not offered any further steps or amended any existing conditions. In relation to live music which the applicant wishes to extend until 1:00am on Friday and Saturdays this is not possible because a conditions which they do not wish to change states:-

5. *Amplified live music and entertainment until 00.30 hours shall be limited to Friday and Saturday.*

6. *Amplified live music and entertainment until 23.30 hours shall be limited to not more than three evenings per week (Sunday-Thursday).*

This contradiction has perhaps been overlooked by the applicant but again as no prior consultation took place before the application was submitted I cannot be sure of the applicant's intentions. Again this demonstrates the application been poorly considered.

13. Conditions 1 under Annex 3, The prevention of Crime and Disorder requires:-

'On every occasion that the premises sells alcohol after midnight and then closes after 00.30, SIA door staff shall be employed from 10.00pm until closing.'

Though led by colleagues in Police Licensing on the suitability of these conditions should the application be accepted I would expect the applicant to consider or as a minimum standard demonstrate they have reviewed who they intend to use SIA

door staff. Door Staff play a pivotal but much underappreciated role in managing and controlling noise nuisance. How many door staff will be employed? What time will they finish? What will be expected from them? The application does not address these concerns.

14. Conditions 2 under Annex 3, The prevention of Public Nuisance requires:-

'Doors and windows shall be kept shut during regulated entertainment to reduce noise breakout. A management scheme shall be in place to ensure this situation remains.'

The applicant wishes to extend the hours of regulated entertainment therefore I would expect the applicant to provide supporting evidence of how this condition will be complied with.

15. Conditions 2 under Annex 3 requires:-

'The volume of amplified sound used in connection with the entertainment provided shall at all times be under the control of the licensee/management.'

Whilst this condition may have been suggested at a previous hearing it is no longer relevant given the history of noise complaints at these premises since the condition was imposed on the license. To comply with this condition requires over reliance on an individual judgment, whose opinion might be biased, misinformed or misguided. The installation of effective noise limiters will eliminate the uncertainty of manager control.

16. Part 3 of the application asks applicants to state the nature of the proposed variation, the applicant has written:-

'All other licensable hours, activities, including the currently permitted times for the upstairs area of the premises, and conditions are to remain the same'

The 'upstairs' area is not currently licensed by Torbay Council and to my knowledge the upstairs area comprises of living accommodation. This appears to be another error in a poorly thought-out application.

17. There are no existing conditions nor has the applicant suggested any further conditions to manage noise from customers. Will the beer garden remain open until 3:00am? Will numbers be limited to reduce noise breakout? Will smokers be allowed to smoke on the street and how will they be monitored and managed? No thought has either been given to how dispersion of customers at 3:00am will be managed. A simple sign advising people to be respectful of neighbours at the exits is not enough. People in the street if associated with a given premises are still the responsibility of the premises, a concept rarely understood by licensees

18. As this variation is for the life of the licence if accepted I would like to draw the committee's attention to the concerns of how this premises is managed. The proposed variation if accepted gives me cause for concern as these changes will be for the life of the premises. Punch Taverns struggles to retain managers appointed by Pub Solutions. Since 2007 8 separate managers (who also act as the DPS) have managed the Bolton Hotel (please see appendix 2).

The longest a manager has worked at the premises is 27 months with the mean being 11.5 months over a 9 year period. Whilst the Council has not officially received a complaint about the management of the current DPS, the high turnover of managers does not instill confidence future managers will run the premises in a

manner that promotes the licensing objectives. A number of previous managers undermined the licensing objections resulting in numerous interventions from Officers of the Council and Devon and Cornwall Police.

Conclusion and Recommendations

19. The applicant has failed to submit a variation application that has considered Torbay Council Licensing Statement of Principles consequently if granted as applied for will undermine the licensing Objectives 'The Prevention of Public Nuisance' and 'Prevention of Crime and Disorder'.
20. The lack of prior consultation coupled with the consistent and significant errors and omissions in the applications leads to me believe neither the applicant nor its agents and managers in place have taken the consequences of the proposed variation seriously.
21. I therefore respectively ask members of the licensing sub-committee to refuse outright the variation application as applied for on the grounds the application will undermine the licensing objectives 'The Prevention of Public Nuisance' and 'Prevention of Crime and Disorder'.

Mr Karl Martin
Public Protection Officer

Appendix 1

Fig 1 - Street view of the Bolton



Fig 2 - Aerial view, approx perimeter of the Bolton shown in red with yellow lines indicating distance to the frontages of nearest known residential properties.

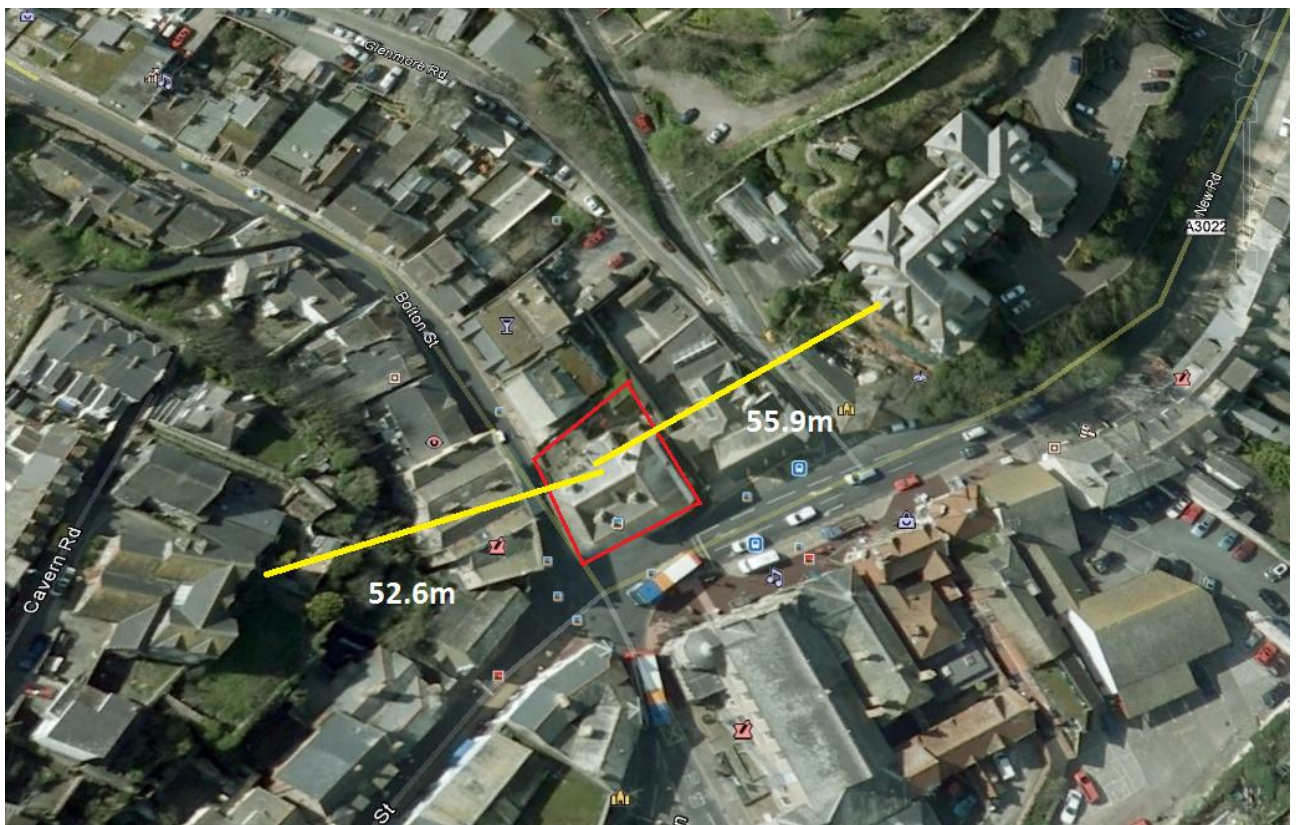


Fig 3 – 3D Street view demonstrating elevation of surrounding environment, the Bolton Hotel sits in a former river bed.



Fig 4 – Noise attenuation distance map



Appendix 2

Fig 1 - History of noise complaints

3rd December 2007 – Noise from amplified music
 10th March 2008 – Noise from amplified music
 10th June 2008 – Noise from amplified music
 11th August 2008 – Noise from amplified music
 10th February 2011 – Noise from amplified music
 8th August 2013 – Noise from amplified music and customers
 19th December 2013 – Noise from amplified music and customers

Fig 2 - Data from Lalpac licensing database – Since 2005

25/10/2007	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	08/11/2007	08/11/2007	indefinite	Completed
18/08/2009	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445			indefinite	Abandoned
02/09/2009	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	16/09/2009	16/09/2009	indefinite	Completed
26/02/2010	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	12/03/2010	12/03/2010	indefinite	Completed
26/05/2010	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445			indefinite	Abandoned
24/06/2010	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	09/07/2010	09/07/2010	indefinite	Completed
21/07/2010	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	04/08/2010	04/08/2010	indefinite	Completed
02/06/2015	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	11/06/2015	11/06/2015	indefinite	Completed
15/10/2012	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	02/11/2012	02/11/2012	indefinite	Completed
21/06/2013	PUNCH TAVERNS ...	Bolton Hotel	Premises Licence WITH Alc...	Change Sup...	PL0445	10/07/2013	10/07/2013	indefinite	Completed