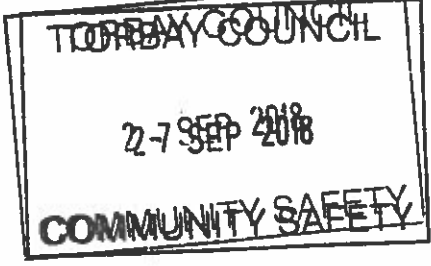


Memorandum

To:  From : Mr Karl Martin

c.c. Contact :

c.c. Ext : 01803 208025

c.c. My Ref : 1ZV SRU No: 246158

For the attention of: Your :

Mandy Guy, Licensing Officer Ref :

Date : 27th September 2018

**Subject: Review of Churston Court, Churston Ferrers, Brixham, TQ5 0JE.
Premise licence number PL1061**

1 Overview

- 1.1 Based on the evidence collected by officers of Torbay Councils Community Safety department and evidence submitted by residents I wish it to be known to the members of the Licensing Sub-Committee that in my capacity as the Responsible Authority for the licensing objection 'The prevention of Public Nuisance' I support the review of Churston court for reasons set out in this report.

2 Background

- 2.1 Churston Court (trading as Churston Manor) is a 16th Century grade II listed building situated in the village of Churston Ferrer's, please see appendix 1. The current owners stated the premises is a hotel, restaurant and bar.
- 2.2 In October 2016 the Premises licence was transferred to the current Licensee, Gooseberry Inn (2016) Ltd. Jonathon Smith, one of the Directors of the company acts as the Designated Premise Supervisor (DPS).
- 2.3 The Licence transferred to the 2004 Licensing regime under grandfather rights and does not have any permissions for regulated entertainment for any external areas. Instead the PLH (Premises Licence Holder) benefits from the Live Music Act 2012. Please refer to appendix 2 for an overview.
- 2.4 The premises is flanked on two side by a concentration of residential property in close proximity. Notably properties on Church Road and Green lane. Properties further away on Links close and Churston Road have also been affected by noise nuisance.

3 Noise complaints received to date

- 3.1 August 2017 the department received a noise complaint regarding the screening of a film in the garden area. The showing of films is not included in the scope of the Live Music Act 2012 and a PLH is required to submit a Temporary Event Notice (TEN) as this activity is not authorised by the current licence. Verbal advice was given to the PLH regarding TENS and noise nuisance.

- 3.2 A TEN was submitted for an outdoor showing of a film for the 30th September 2017 but not further noise complaints was received by the department for the remainder of 2017.
- 3.3 4th August 2018 the department received a second complaint regarding noise from outdoor film showing. The resident also described live music events hosted on Sunday afternoons was becoming a problem but the volume of the cinema night was unreasonably excessive. The complainant (review applicant) created an account with the noise app and submitted a number of recording during the evening of the 4th August 2018.
- 3.4 On the 7th August the Mr Smith was informed he needed to submit TENS for cinema events. On the 8th August Mr Smith submitted 4 TENS for cinema events running until the end of September 2018. Despite being able to object to these TENS the decision was made not to object as confidence was high that Mr Smith would remedy the nuisance.
- 3.5 On 14th August 2018 the department was made aware of the 'Strawberry fayre' event scheduled for the 18th and 19th August 2018 which involved more than a dozen live music acts performing over the weekend between midday and 11:00pm.
- 3.6 On the afternoon of the 17th August I spoke with Chris Hodson (Manager/owner) at the premises and advised they need to monitor sounds levels during the event. It was clear the event was going to cause significant disruption to the neighbourhood if sound levels were not carefully managed.
- 3.7 On the evening of the 17th August five further complaints were logged on the noise. Mr Smith revealed later this was a private Birthday party and not part of the strawberry fayre event.
- 3.8 During the course of the 18th and 19th August the Authority received a further 15 submissions via the noise app. In the following week the department received a further 7 new complaints from residents regarding the 'Strawberry Fayre' event.
- 3.9 On Thursday 23rd August evidence submitted from residents was reviewed and it was determined a Statutory Nuisance had occurred and would likely re-occur if further events involving amplified music took place in the external areas of the Churston Court Hotel.
- 3.10 On Friday the 24th August Mr Smith was written to informing he had 7 days to formally respond with proposals to abate the nuisance or an abatement notice would be served. Please see appendix 4.
- 3.11 27th August (Bank Holiday) 2018 further submissions made via the noise app. As on previous occasions live music in the outside beer gardens unreasonably disturbed nearby residents.
- 3.12 On 30th September 2018 a meeting took place with Mr Smith and Mr Hobson but also present where the organisers of Strawberry fair event. The meeting was a constructive and positive meeting and on the 31st I received a letter from Mr Smith, please see appendix 4, summarising the preventive steps he plans to take to prevent further nuisance occurring. This letter was accepted as suitable reassurance from the PLH that he was investigating measures to mitigate nuisance.
- 3.13 At the meeting on the 30th an event due to take place on Sunday the 2nd September was discussed. Ten live music acts performed in the beer garden between midday and

9pm. Mr Smith was advised he should not host any further live music events outside until mitigating measures had been put in place and proven to work.

3.14 On the same day the Council received an application for a review of the premises licence from a resident.

3.15 On Sunday the 2nd September 2018 the Council received further complaints regarding the excessive volume of live music emanating from the beer garden of the Churston Manor.

3.16 No further reports of noise nuisance made to the Council.

4 Conclusion

4.1 The Licensing Authority has no records of noise complaints from these premises prior to 2017.

4.2 The premises benefits from a sizeable outside area and naturally the owners would rightly seek to capitalise on this commodity. However at any event were amplified live or pre-recorded music is engaged, then the risk of nuisance must be carefully considered. For events such as the strawberry fayre a noise management plan should have been developed and implemented. It is an irresponsible and a serious management failing not to take into account the impact of noise from large events. Unfortunately the same failings occurred on the 2nd September 2018, despite being advised not to proceed with the event.

4.3 Consequently residents have felt marginalised as the PLH has ignored their statutory right to quiet and peaceful enjoyment of their homes and more profoundly disregarded the covenant of being a good neighbour. Mr Smith in correspondence has stressed 'community' is at the centre of the business model but repeated instances of uncontrolled live music has not been welcomed by a large section of the community living around the premises.

4.4 It must be noted summer 2018 the South West peninsula enjoyed a long stable period of unseasonable hot and dry weather. Many PLH's took advantage of this weather including the management of the Chelston Manor. The series of events outlined in this report may not manifest in future years, but it could and highlights deficiencies if performances of live music are permissible where there is no licensing regimes to protect the rights of those who do not wish to participate.

5 Recommendations

5.1 The current licence does not authorise Live or recorded music in any outside area. At the time of writing this report the only recommendation I duly ask members of the licensing sub-committee to consider is removal of the exemption offered by the Live Music by the addition of the following condition:-

5.2 'The exemptions under the Live Music Act 2012 shall be repealed in respect of these premises.'

6 Appendices

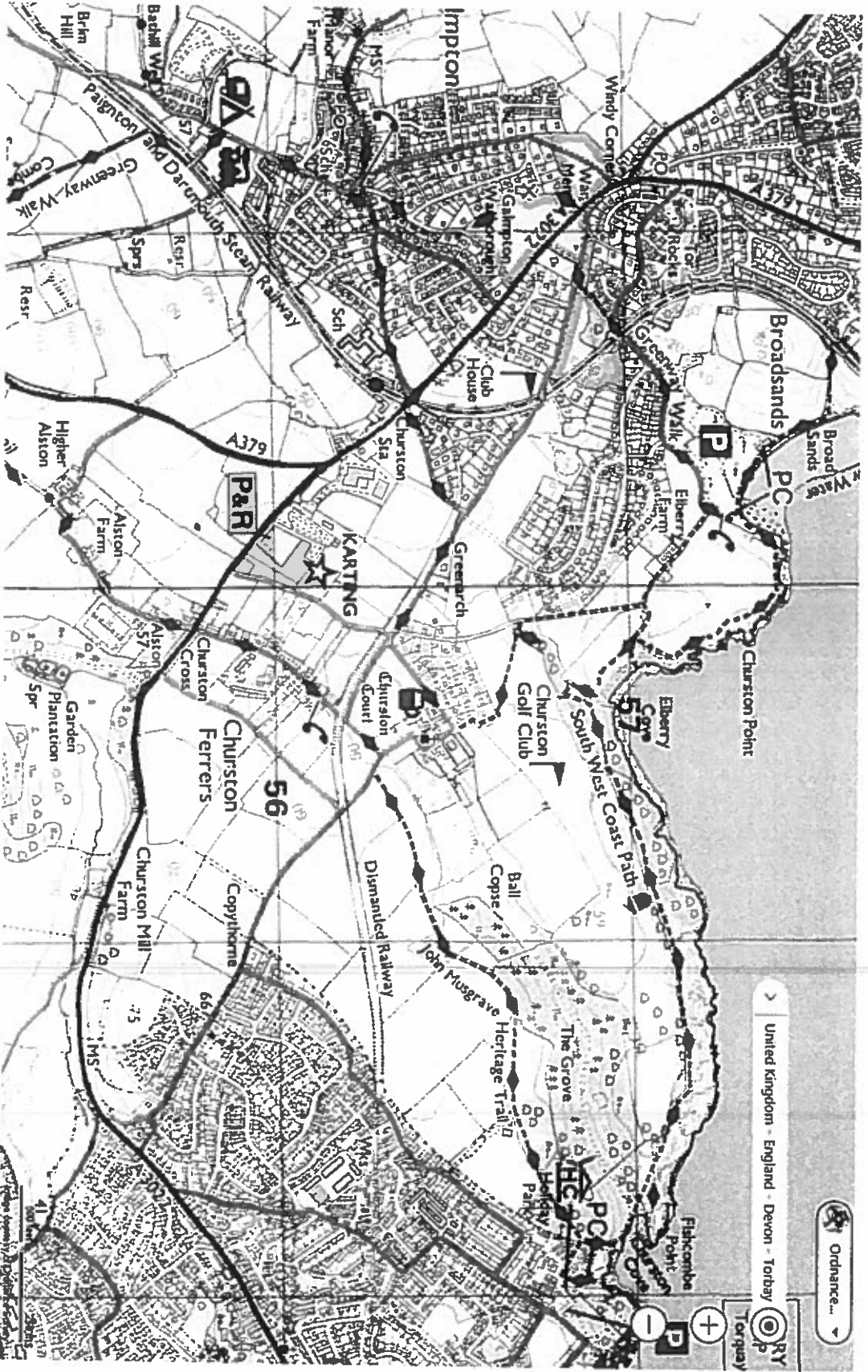
6.1 Please see attached documents.

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

Appendix 1 – Aerial view of Churston Ferries

1.1





Appendix 2 – Overview of the Live Music Act 2012

The Live Music Act took effect from 1 October 2012, and since 6th April 2015 now applies to recorded music, and covers larger audiences.

The Act disapplies live music related conditions if the following criteria are satisfied:

- There is a premises licence or club premises certificate in place permitting 'on sales';
- The premises are open for the sale or supply of alcohol for consumption on the premises;
- Live or recorded music is taking place between 8am and 11pm;
- If the live music is amplified or recorded, the audience consists of no more than 500 people

Live music also ceases to be classed as regulated entertainment under the Licensing Act 2003 if the above criteria are satisfied.

"Live Music" includes vocal and instrumental music and also karaoke singing. Pre-recorded videos played on karaoke machines are likely to require authorisation for "Films" but if only the words to the song are displayed then no authorisation is required.

The Act also creates a general exemption that live **unamplified** music provided **anywhere** shall not be regarded as the provision of regulated entertainment under the Licensing Act 2003 if it takes place between 8am and 11pm, regardless of the number of people in the audience.

There are a number of mechanisms for the protection of residents and these are:

- Upon a review of the premises licence the Licensing Authority can determine that conditions on the premises licence relating to live or recorded music will apply even between 8am and 11pm;
- If the Premises Licence doesn't presently authorise live or recorded music the Licensing Authority can add conditions to the Premises Licence as though the live or recorded music were regulated entertainment authorised by that Premises Licence, again to apply between 8am and 11pm
- The Licensing Authority can determine that live or recorded music at the premises is a licensable activity and live or recorded music can no longer be provided without permission on the Premises Licence or a Temporary Event Notice
- Other noise legislation, for example in the Environmental Protection Act 1990, will continue to apply.

The Live Music Act **does not** allow licensed premises to cause a noise nuisance

The Live Music Act removed the need to licence entertainment facilities completely - regardless of time or audience size. This means that dance floors, microphone stands, pianos made available for use by the public etc. will not be licensable once the Act comes into effect. Health & safety law will of course continue to apply.

The Live Music Act does not remove the requirement for permission to play live and recorded music from PPL PPR.

Appendix 3 – Noise app reports.



Source Address



Churston Court Hotel, Church Road, Churston Ferrers , TQ50JE

Reports

| Date | Source | Location | Intensity Rating | Duration |
|------------------------|---|--|------------------|----------|
| 02 Sep 2018 21:50pm |  Live Music |  Living Room | 10/10 | 09:00:00 |

Comments

Need to get the business license revoked

| Date | Source | Location | Intensity Rating | Duration |
|------------------------|---|--|------------------|----------|
| 02 Sep 2018 21:13pm |  Live Music |  Living Room | 10/10 | 09:00:00 |

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|------|--------|----------|------------------|----------|
|------|--------|----------|------------------|----------|

02 Sep 2018
21:07pm



Live Music



Living Room

9/10

09:00:00

Comments

"

-

Date

Source

Location

Intensity
Rating

Duration

02 Sep 2018
21:02pm



Live Music



Living Room

9/10

10:00:00

Comments

"

Shut the business down enough is enough

Date

Source

Location

Intensity
Rating

Duration

02 Sep 2018
20:31pm



Live Music



Living Room

7/10

05:30:00

Comments

"

This is after they promised to keep the noise to a minimum

Date

Source

Location

Intensity
Rating

Duration

02 Sep 2018
20:02pm



Live Music



Garden

7/10

07:00:00

Comments

"

-

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|---|------------------|----------|
| 02 Sep 2018 18:32pm |  Live Music |  Garden | 5/10 | 00:00:00 |

Comments

” The notice from the lamppost has been removed can we have more to put up

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|---|------------------|----------|
| 02 Sep 2018 16:53pm |  Live Music |  Garden | 7/10 | 02:00:00 |

Comments

” The sound level was awful even though they had promised to keep to a very low level the parking is dangerous and the police have been informed by several people

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 27 Aug 2018 16:30pm |  Live Music |  Living Room | 8/10 | 02:00:00 |

Comments

” -

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 27 Aug 2018 16:11pm |  Live Music |  Living Room | 7/10 | 01:00:00 |

Live Music

Living Room

Comments

''

-

Date

Source

Location

Intensity
Rating

Duration

27 Aug 2018
16:06pm



5/10

01:00:00

Live Music

Living Room

Comments

''

-

Date

Source

Location

Intensity
Rating

Duration

27 Aug 2018
15:17pm



6/10

00:45:00

Live Music

Garden

Comments

''

-

Date

Source

Location

Intensity
Rating

Duration

19 Aug 2018
16:57pm



5/10

02:55:00

Live Music

Garden

Comments

''

-

Date

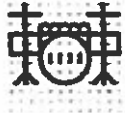
Source

Location

Intensity
Rating

Duration

19 Aug 2018
16:52pm



Live Music



Living Room

7/10

02:30:00

Comments

”

-

Date

Source

Location

Intensity
Rating

Duration

19 Aug 2018
15:12pm



Live Music



Living Room

6/10

01:00:00

Comments

”

Why does it have to be so loud?

Date

Source

Location

Intensity
Rating

Duration

19 Aug 2018
15:10pm



Live Music



Garden

7/10

01:00:00

Comments

”

-

Date

Source

Location

Intensity
Rating

Duration

18 Aug 2018
22:07pm



Live Music



Living Room

10/10

08:00:00

Comments

”

-

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 18 Aug 2018 21:56pm |  Live Music |  Living Room | 10/10 | 08:00:00 |

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 18 Aug 2018 21:51pm |  Live Music |  Living Room | 10/10 | 08:00:00 |

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 18 Aug 2018 21:23pm |  Live Music |  Kitchen | 10/10 | 07:00:00 |

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 18 Aug 2018 21:04pm |  Live Music |  Living Room | 10/10 | 07:00:00 |

Comments

”

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 18 Aug 2018 15:33pm |  Live Music |  Living Room | 7/10 | 02:55:00 |

Comments

”

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|--|--|------------------|----------|
| 18 Aug 2018 15:17pm |  Live Music |  Garden | 7/10 | 02:45:00 |

Comments

”

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|---|------------------|----------|
| 18 Aug 2018 14:11pm |  Live Music |  Garden | 7/10 | 01:00:00 |

Comments

”

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 17 Aug 2018 23:00pm |  Live Music |  Bedroom | 5/10 | 02:00:00 |

Live Music Bedroom

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|------|--------|----------|------------------|----------|
|------|--------|----------|------------------|----------|

17 Aug 2018
22:57pm



10/10

02:00:00

Live Music

Bedroom

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|------|--------|----------|------------------|----------|
|------|--------|----------|------------------|----------|

17 Aug 2018
22:51pm



5/10

02:00:00

Live Music

Bedroom

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|------|--------|----------|------------------|----------|
|------|--------|----------|------------------|----------|

17 Aug 2018
22:31pm



10/10

02:00:00

Live Music

Bedroom

Comments

''

| Date | Source | Location | Intensity Rating | Duration |
|------|--------|----------|------------------|----------|
|------|--------|----------|------------------|----------|

17 Aug 2018
22:16pm



Live Music



Bedroom

8/10

02:00:00

Comments

”

Very intrusive

Date

Source

Location

Intensity
Rating

Duration

15 Aug 2018
21:37pm



Loud Voices



Garden

7/10

02:00:00

Rate

Comments

”

Date

Source

Location

Intensity
Rating

Duration

04 Aug 2018
22:41pm



Antisocial
Behaviour



Garden

10/10

02:00:00

Online

Comments

”

Date

Source

Location

Intensity
Rating

Duration

04 Aug 2018
22:39pm



Music



Garden

10/10

02:00:00

Online

Comments

”

| Date | Source | Location | Intensity Rating | Duration |
|--|---|---|------------------|----------|
| 04 Aug 2018 22:33pm  |  Live Music |  Garden | 10/10 | 02:00:00 |
| Comments | | | | |
| " | | | | |

| Date | Source | Location | Intensity Rating | Duration |
|--|--|---|------------------|----------|
| 04 Aug 2018 22:29pm  |  Loud Voices |  Garden | 5/10 | 02:00:00 |
| Comments | | | | |
| " | | | | |
| Very disturbing | | | | |



Source Address

on, Brixham, TQ50JG

Reports

| Date | Source | Location | Intensity Rating | Duration |
|------------------------|---|---|---------------------|----------|
| 02 Sep 2018 13:42pm |  Live Music |  Garden | 10/10 | 02:00:00 |

Comments

”



Source Address

Churston Manor, Church Road, Churston ferrers, TQ5 0JE

Reports

| Date | Source | Location | Intensity Rating | Duration |
|------------------------|---|--|------------------|----------|
| 02 Sep 2018 21:07pm |  Live Music |  Bedroom | 8/10 | 07:00:00 |
| Comments | | | | |
| " | | | | |

| Date | Source | Location | Intensity Rating | Duration |
|------------------------|--|---|------------------|----------|
| 02 Sep 2018 15:01pm |  Music |  Garden | 6/10 | 03:00:00 |
| Comments | | | | |
| " | | | | |
| Can not sit in garden. | | | | |



Source Address

Churston Manor Hotel, Church Road , Churston Ferrers, TQ5 0JE

Reports

| Date | Source | Location | Intensity Rating | Duration |
|------------------------|---|--|------------------|----------|
| 02 Sep 2018 21:52pm |  Live Music |  Dining Room | 9/10 | 10:00:00 |
| Comments | | | | |
| " | | | | |

| Date | Source | Location | Intensity Rating | Duration |
|---|---|--|------------------|----------|
| 02 Sep 2018 21:06pm |  Live Music |  Dining Room | 9/10 | 09:00:00 |
| Comments | | | | |
| " | | | | |
| This is Sunday evening with punk rock ! | | | | |

| Date | Source | Location | Intensity Rating | Duration |
|------|--------|----------|------------------|----------|
|------|--------|----------|------------------|----------|

02 Sep 2018
14:41pm



Live Music



Dining Room

6/10

00:00:00

Comments

”

Date

Source

Location

Intensity
Rating

Duration

02 Sep 2018
14:39pm



Live Music



Dining Room

6/10

02:40:00

Comments

”

Very loud and also appalling musicians

Date

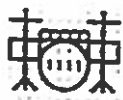
Source

Location

Intensity
Rating

Duration

02 Sep 2018
12:02pm



Live Music



Dining Room

6/10

00:10:00

Comments

”

It's us disturbing the peace of the area yet again

Date

Source

Location

Intensity
Rating

Duration

19 Aug 2018
16:56pm



Live Music



Dining Room

9/10

01:30:00

Comments

”

Following the live event yesterday from 1pm to 10.30 pm, here we go again! I cannot find a live music license for outside music at Churston Manor on your web site?

| Date | Source | Location | Intensity Rating | Duration |
|-------------------------------|---|--|------------------|----------|
| 18 Aug 2018 22:13pm |  Live Music |  Dining Room | 7/10 | 09:00:00 |
| Comments '' - | | | | |

| Date | Source | Location | Intensity Rating | Duration |
|--|---|---|------------------|----------|
| 18 Aug 2018 21:40pm |  Live Music |  Garden | 8/10 | 08:30:00 |
| Comments '' Continuous and highly intrusive. We have to keep all our windows closed to keep the sound out. It started at 1pm. | | | | |