

Minutes of the Statutory Licensing Sub-Committee

6 February 2025

-: Present :-

Councillors Foster, Barbara Lewis and Virdee

1. Election of Chairman/woman

Councillor Barbara Lewis was elected as Chairwoman for the meeting.

2. Licensing Act Review in respect of The Devon Dumpling, 108 Shiphay Lane, Torquay

Members considered a report on an Application for a Review of a Premises Licence in respect of the Devon Dumpling, 108 Shiphay Lane, Torquay.

Written Representations were received from:

Name	Details	Date of Representation
Applicant	Application and supporting correspondence for a Review of the Premises Licence in respect of the Devon Dumpling, 108 Shiphay Lane, Torquay.	16 December 2024
Public Protection Officer	Report by Torbay Council as the Responsible Authority for Public and Statutory Noise.	10 January 2025
Member of the Public	Three Representations supporting the Application for a Review of the Premises Licence.	19 December 2024 26 December 2024 7 January 2025
Member of the Public	Neutral Representation on behalf of the Respondent.	20 December 2024
Member of the Public	Twenty-one Representations objecting to the Application for a Review of the Premises Licence.	19 December 2024 20 December 2024 5 January 2025 8 January 2025
Ward Councillor	Representation objecting to the Application for a Review of the Premises Licence.	13 January 2025

Additional Information:

At the Hearing, the Public Protection Officer played three sound recordings.

Oral Representations were received from:

Name	Details
Applicant	The Applicant outlined the Application for a Review of a Premises Licence and responded to Members' questions.
Public Protection Officer	The Public Protection Officer outlined his representation and responded to Members' questions.
Member of the Public	A Member of the Public outlined their support for the application for a Review of a Premises Licence and responded to Members' questions.
The Respondent	The Respondent supported by his Solicitor responded to the Application for a Review of a Premises Licence and responded to Members' questions.
Ward Councillor	A Ward Councillor outlined their objection to the Application for a Review of a Premises Licence and responded to Members' questions.
A Member of the Public	A Member of the Public outlined their objection to the Application for a Review of a Premises Licence and responded to Members' questions.
A Member of the Public	A Member of the Public outlined their objection to the Application for a Review of a Premises Licence and responded to Members' questions.

Decision:

That the Premises Licence for the Devon Dumpling, be modified as follows:

- Supply of alcohol 10.00 am to 10.30 pm Monday to Thursday and 10.00 am to 11.30 pm Friday and Saturday.
- Opening times be 10.00 am to 11.00 pm Monday to Thursday and 10.00 am to 12 midnight Friday and Saturday.

And the following conditions to be amended:

Conditions attached after a review hearing by the Licensable Authority

Condition 1

'The premises outside areas shall be closed by 10 pm every day except for the designated smoking area' known as the cage'.

shall now read

'The premises outside areas shall be closed by 10 pm every day except for the designated smoking area'.

Condition 3

'all windows and doors shall be kept closed during regulated entertainment after 10 pm'.

shall now read

'all windows and doors shall be kept closed during regulated entertainment after 10 pm with regular checking by staff'.

Condition 8

'The Duty Manager, or designated staff member on every Friday or Saturday to effectively monitor and control noise from patrons on the car park and front outside areas after 11 pm'.

shall now read

'The Duty Manager, or designated staff member on every evening to effectively monitor and control noise from patrons on the car park and front outside areas after 10.30 pm'

Condition 10

'Signage shall be prominently displayed in the premises outside area, notifying patrons to keep noise to a minimum so as not to unreasonably disturb nearby residents'

shall now read

'Signage shall be prominently displayed inside the premises and its outside areas, notifying patrons to keep noise to a minimum so as not to unreasonably disturb nearby residents'

Condition 12

'Lights in the outside area shall be turned off at 10 pm but for the smoking area which is to be situated in the area known as the cage, and the area leading directly to the cage'

shall now read

'Lights in the outside area shall be turned off at 10 pm but for the designated smoking area and the area leading directly to it'

Condition 13

'After 10 pm patrons wishing to smoke, must use the designated smoking area known as the cage'.

shall now read

'After 10 pm patrons wishing to smoke, must use the designated smoking area'.

The following condition to be removed:

Condition 11 ' patrons using the outside area shall be seated and signage shall be prominently displayed in these areas notifying patrons of this.

And the following additional conditions:

- 'A noise limiting device (the specification and design to be agreed with Torbay Council's Environmental Health Service: shall be fitted so that all live and recorded music is channelled through the device(s). The maximum noise levels will be set by agreement with Torbay Council's Environmental Health Service and will be reviewed from time to time as appropriate';
- 'No smoking shall be permitted outside the front of the premises';
- 'the premises shall install, operate and maintain a comprehensive digital colour CCTV system with full audio capabilities to the satisfaction of the Local Authority. All recordings will be stored for a minimum period of 28 days with date and time stamping. Viewable copies of the recordings will be provided on request to the Police and Local Authority Officers as soon as is reasonably practicable and in accordance with the United Kingdom General Data Protection Regulation and Data Protection Act 2018';
- 'Within three months, the premises must put into operation a lawfully compliant smoking area to the satisfaction of the Local Authority. Namely: by the 24 May 2025';
- 'clear and legible notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly'; and
- 'All staff, including the Designated Premises Supervisor, who are engaged in licensable activities at the premises shall receive initial training within 3 months on their roles and responsibilities in this regard and information in relation to the following:
 - The hours and activities permitted by the premises licence issued under the Licensing Act 2003 and conditions attached to the licence;
 - Training shall be recorded in documentary form and shall be regularly refreshed at no greater than 12 monthly intervals;
 - Training records shall be made available for inspection and copying at reasonable times upon request of an authorised officer of a responsible authority; and
 - Training records will be retained for at least 12 months'.

Reasons for Decision:

Having carefully considered all the written and oral Representations, Members unanimously resolved to modify the Premises Licence as they could not be satisfied on the evidence before them, that without such modification, the Premises Licence Holders would promote the Licensing Objectives; namely, The Prevention of Public Nuisance and The Prevention of Crime and Disorder.

In coming to their decision, Members gave serious consideration to revoking the Premises Licence and removal of the Designated Premises Supervisor (DPS), but on this occasion, concluded that amendments to the existing conditions, the imposition of additional conditions, and a reduction in operating hours would achieve the required outcomes, alleviate concerns, and promote the Licensing Objectives. Members noted that since the Review Application was submitted by the Licensing Authority, the Premises Licence Holders had submitted a Variation Application to update the approved plan, and an Application to Vary the DPS, both of which had been approved, and Members were assured to note.

However, it was of concern to Members that the Licensing Officers had experienced a lack of co-operation from the Premises Licence Holders, and particularly Mr Raymond Lyon who until recently was the DPS, and who, according to the Licensing Officer, did not appear to be on site or involved in the day to day running of the Premises. Furthermore, that email communications had not been responded to by either Premises Licence Holder, despite significant attempts by Officers to gain engagement over a long period of time. Whilst Mr Matthew Lyon accepted that these failures had occurred and provided assurances that moving forward this would not happen again, Members determined that as the newly approved and appointed DPS, appropriate training was required as to what was expected of him. Members were reassured by the comments of Mr Matthew Lyon's representative who stated that he had impressed upon his client the seriousness of his lack of engagement and noncompliance with the Licence Conditions and hoped that this would be enough to secure timely engagement and compliance going forward.

Members heard from Mr Matthew Lyon and his representative that difficulties had been experienced in making the designated smoking area known as 'the cage' compliant with The Smoke-Free (Premises and Enforcement) Regulations 2006. However, Members did not accept that it was the responsibility of the builders engaged to carry out any remedial work to ensure or advise upon compliance, and that failing to make attempts to remedy the situation fell below acceptable conduct expected of a responsible Premises Licence Holder and DPS. Members determined that in line with that proposed by Mr Matthews Lyon's representative, the smoking area needed to be relocated to an area which was compliant with the legislation and determined an appropriate Condition to ensure this occurred in a timely manner to mitigate noise outbreak from the use of the Premises outside area. Noting also that use of any smoking area, not in accordance with The Smoke-Free (Premises and Enforcement) Regulations 2006, could be dealt with through sperate enforcement action.

Members were played 3 video recordings by the Public Protection Officer as part of his oral Representation which showed noise emanating from the front of the Premises

when patrons were dispersing, and when music was being played inside the Premises. The timing of these recordings being 23.20 hours, 00.05 hours and 23.18 hours. The Public Protection Officer confirmed that 10 noise complaints had been received over the previous 12-month period from 3 local residents.

In contrast, Members noted the written Representations received detailing efforts made by the Premises Licence Holders to minimise noise disturbance and heard from one nearby resident that they had rarely been disturbed by any noise emanating from the Premises, despite being noise sensitive. Notwithstanding this, Members felt that such a level of noise nuisance as shown in the video footage was unacceptable given the location of the Licensed Premises within a residential area, which appeared to go unchallenged that the time, and that a reduction in opening hours was necessary and proportionate given the evidence before them, to alleviate the late-night disturbances experienced by proximate residents.

Members heard from Mr Matthew Lyon and his representative that since those complaints were received, and in working with the Public Protection Officer, measures had now been put in place at the Premises to ensure a quiet dispersal of patrons with a member of staff being present at the front of the property at closing time, and that noticeable improvements had been seen, which was supported by the submission of the Public Protection Officer.

Upon questioning of Mr Matthew Lyon, Members were surprised to note that whilst CCTV was installed at the premises, he was not aware as to whether it had audio capabilities. Members felt that in light of the noise issues which had plagued the Premises over a number of years, the additional condition relating to CCTV was necessary, to ensure that the Premises Licence Holder upheld the Licensing Objectives in future operation of the Premises, noting that Conditions added at the previous Review hearing had not been sufficient to eliminate the noise nuisance complaints.

In concluding, Members noted that no Representation had been received from the Police and the level of community support for the Premises, through the many written and oral Representations received from residents living nearby and determined in accordance with the modifications to the Premises Licence set out above and full compliance by the Premises Licence Holder and DPS of all Conditions of their Premises Licence going forward, that the Licensing Objections would be promoted. Members further noted that should any issues arise as a result of this grant, a further Review of the Premises Licence can be sought by a Responsible Authority or any other person.

Chairwoman