

: Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – An application for a Review of a Premises Licence for Rock Garden, 40 – 44 Swan Street, Torquay TQ2 5ES**

Wards Affected: **Tormohun**

To: **Licensing Sub Committee** **19th November 2020**

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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 Review of a Premises Licence. The Premises is in the Cumulative Impact Area.
- 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 Under Regulations to the Licensing Act 2003 (the Act), the Licensing Authority (the Authority) must hold a hearing to consider the application and any relevant Representations.

The Authority must have regard to the application and any relevant Representations and take one or more of the steps as detailed below, as it considers appropriate for the promotion of the Licensing Objectives.

The steps are –

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the Designated Premises Supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;
- (f) to do nothing;

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

If the licence is subject to sections 19, 20 and 21 (requirement to include certain conditions in Premises Licences) they remain.

Where the Authority takes a step to modify the conditions or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

- 1.6 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 The application has been made under Section 51 of the Act for a Review of the Premises Licence, at the Premise detailed above.

Full details of the application are shown in **Appendix 1** and relate to noise emanating from the garden area of the premises.

A copy of the current licence, including the plan of the premises is attached as **Appendix 2**.

- 2.2 Torbay Council as the Licensing Authority, is satisfied that the Applicant is a person as defined under the Act, as being entitled to make such application and that the application is not frivolous or vexatious. The Authority is also satisfied that the administrative requirements of Section 51(3) (a) and (b) have been met and that the application is therefore, properly made.

3. Application

- 3.1 There have been two Representations received from local residents in support of the premises, who state that they are not affected by noise. There has also been an additional Representation from the Premises Licence Holder, who also lives above the premises. These are attached at **Appendix 3**.

There have been no Representations received in support of the application for Review from any other Interested Party or Responsible Authority.

- 3.2 However, there has been one Responsible Authority Representation received from Karl Martin, the Council's Public Protection Officer. This outlines the history of the premises relating to complaints received and action taken; and is made to provide necessary background information to assist in determining the outcome of this application. This is attached at **Appendix 4**

4. Conclusion

- 4.1 The Authority is required to conduct a hearing under provision of Section 52(2) of the Act.
- 4.2 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.
- 4.3 Once the matter is determined, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 8(2) of Schedule 5 to :-
 - (a) the Applicant for the Review,

- (b) the holder of the Premises Licence, or
- (c) any other person who made relevant Representations in relation to the application.

In the event that an Appeal is entered, the determination will not have affect until the Appeal is either determined or withdrawn.

- 4.4 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 an order as to costs as it thinks fit.

Steve Cox
Environmental Health Manager (Commercial)

Appendices

Appendix 1	Application for Review
Appendix 2	A copy of the Premise Licence
Appendix 3	Representations from the Residents and Licence Holder
Appendix 4	Representation from Responsible Authority

Documents available in members' rooms

None

Background Papers:

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

Torbay Council Licensing Policy 2016-2021.