

Devon & Cornwall Police
HQ Middlemoor
Devon

CERTIFICATE UNDER SECTION 53A(1)(b) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious crime.

Premises: The Sporty's, 80 Belgrave Road, Torquay, Devon, TQ2 5HZ

Premises licence number (if known): PL0420

Name of premises supervisor (if known): Mr James William LANG

I am a Superintendent in the Devon and Cornwall police force.

I am giving this certificate because I am of the opinion that other procedures under the Licensing Act, such as a Review of the Premises Licence under Section 51 of the Licensing Act 2003, are inappropriate due to the seriousness of the concerns identified in respect of this premises.

This incident involves the public house opening to the public for consumption of alcohol on the premises during Lockdown 1, in contravention of the Coronavirus Health Protection Regulations 2020. On this occasion advice was given to Mr LANG concerning his conduct.

When licensed premises were allowed to re-open for consumption on the premises, on Saturday 4 July 2020, a joint agency visit was conducted by my officers and Torbay Council staff. During the course of that visit Mrs Smart (Police Licensing Officer) and Mr Martin (Torbay Council Public Protection Officer) were not satisfied that adequate measures were in place to reduce the spread of coronavirus or protect customers and Mr LANG had not demonstrated a responsible attitude in the management of the premises

On Wednesday 11 November 2020 information was received that people had been seen entering the premises. Officers attended and identified that the consumption of alcohol was taking place therein.

The concern of Devon and Cornwall Police is that should this premises be allowed to re-open when the closure restrictions are lifted, this could endanger the life and/or health of the public and therefore immediate steps are required to consider Mr LANG's suitability to manage the premises.

I am conscious of the DCMS guidance on the use of "Exedited Reviews" and given the emphasis that is given to use of this power to tackle serious crime, my feelings that this process is deemed appropriate are further enforced.

Signed: B. Davison Date: 30/11/20
Superintendent
Brent DAVISON

Delete as applicable.

2 Include business name and address and any other relevant identifying details.

3 Insert rank of officer giving the certificate, which must be superintendent or above.

4 Give a brief description of why other procedures such as a standard review process are thought to be inappropriate, e.g. the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned.

FORM FOR APPLYING FOR A SUMMARY LICENCE REVIEW

TORBAY COUNCIL, LICENSING SECTION, C/O TOWN HALL, CASTLE CIRCUS,
TORQUAY, TQ1 3DR

**Application for the review of a premises licence under section 53A of the
Licensing Act 2003 (premises associated with serious crime or disorder).**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. **Use additional sheets if necessary.**

I, Superintendent Brent DAVIDSON, the Chief officer of police for the South Devon area apply for the review of a premises licence under Section 53A of the Licensing Act 2003

1. Premises details:

Postal address of premises, or if none or not known, ordnance survey map reference or description: The Sporty's, 80 Belgrave Road

Post town: Torquay

Post code (if known): TQ2 5HZ

2. Premises licence details:

Name of premises licence holder (if known): Mr James William LANG

Number of premises licence holder (if known): PL0420

3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read guidance note 1]:

I confirm that a certificate has been given by a senior member of the police force for the police area above that in my opinion the above premises are associated with

serious crime, and the certificate accompanies this application.
(Please tick the box to confirm) X

4. Details of association of the above premises with serious crime, serious disorder or both:

[Please read guidance note 2]

Coronavirus was deemed a pandemic earlier in the year. On 20 March 2020 the Government gave directions for pubs to close, with the Coronavirus Health Protection Regulations 2020 coming into force on 26 March 2020. These regulations required the closure of specified businesses in which food and drink were sold for consumption on the premises (though allowing for selling of the same to be consumed off the premises). The relevant businesses were listed but included restaurants, cafes, bars and public houses.

On 4 July 2020 licensed premises were authorised to open for consumption on the premises and advice regarding making premises "covid-secure" was published on the gov.uk website. The Police and Council Licensing Teams were also available to provide advice where requested.

Unfortunately due to an increase in daily coronavirus infections, on Thursday 5 November 2020 The Health Protection (Coronavirus, Restrictions) (England) (No 4) Regulations 2020 came into force, and premises in which food and drink are sold for consumption on the premises were again required to close (although they can sell food and drink for consumption off the premises). Again the relevant businesses were listed within the regulations and these include restaurants, cafes, bars and public houses.

In respect of both occasions when specified premises were required to close, if a pub opened for the consumption of food or drink on the premises, in breach of the regulations, then the management of those premises would commit the common law offence of public nuisance. This carries a penalty of up to life imprisonment and so becomes a serious crime offence under the Regulation of Investigatory Powers Act 2000, thus fitting the legal obligations for a Section 53(a) Expedited Review.

Public nuisance is a common law offence. It has been defined as follows:

A person is guilty of public nuisance (also known as common nuisance) who, (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects.

Mode of trial and sentence: 2.20 Public Nuisance is triable either way: that is to say, either in the Crown Court or in a Magistrates' Court. As in all common law offences where statute does not provide to the contrary, when it is tried in the Crown Court there is an unlimited power of imprisonment.

The circumstances outlined below show that Mr Lang, the Premises Licence Holder and DPS of The Sports, is seriously undermining the Licensing Objectives of

Prevention of Crime and Disorder and Public Nuisance. The serious crime that this application refers to is in relation to the premises, continuing to open, albeit behind closed doors, to the public by allowing persons to attend and consume alcohol on the premises. This facilitates gatherings of people not from the same household in one place, putting the public at risk of contracting the virus and subsequently passing it on to others.

This is a direct breach of the Coronavirus Health Protection Regulations 2020 and creates a risk to public health, which is a common law offence of public nuisance, and as such is a serious crime.

For information, Sporty's does not have a kitchen and therefore is not able to provide food for consumption on or off the premises.

Summary of Events

On 19 April 2020 a complaint was received from a member of the public that several people were regularly visiting the premises, believed for the consumption of alcohol therein and to play pool.

On 21 April 2020 officers attended the rear entrance of the premises. Inside they located the DPS, Mr Lang, and a friend who were playing pool and music in the pub. Officers noted that the DPS smelt of alcohol and glasses of beer and wine were seen on the bar. The DPS stated that he had been having his friends over to play pool and he further stated that he had played over 600 games with his friends, who had come over 3-4 times a week, throughout the period the premises had been required to close.

Officers gave him advice on this matter and he stated that he thought it was acceptable as some or most of his friends live alone. He was again advised against this and was given strong advice to stop this behaviour immediately.

Whilst at the premises officers noticed a smell of cannabis which they state was coming from inside the premises.

As a result of this incident, Police Licensing Officer, Mrs Smart, wrote to Mr Lang and hand delivered the letter to the premises on Thursday 23 April 2020. A copy of that letter is attached for information.

At 1800 hrs on 4 July 2020 officers attended the premises and noted that loud music was playing, which was immediately turned down when they entered. Officers commented that the music was so loud that people would have to raise their voices in order to be heard. Officers also noticed several customers were sat at the bar and about 10 people were stood around playing pool. The officers gave advice to Mr Lang concerning what they had witnessed.

On 2130 hrs on 4 July 2020 Mrs Smart attended Sporty's in the company of Mr Karl Martin, Public Protection Officer of Torbay Council, and police officers. On entering it was noted that there about 4 customers stood at the bar. Mr Lang produced a Covid risk assessment and this was viewed by Mrs Smart. Mrs Smart noted a

comment on the form stating "One in one out" in relation to the toilets, and she asked Mr Lang how this was managed. He explained that one person could go in when one came out but he could not provide any further information as to how he controlled this. Mrs Smart noted that the assessment referred to 'Enhanced Cleaning' and asked what this entailed. Mr Lang said that 2 people had been sick in the toilets during the afternoon so he had cleaned that up. He was asked why 2 people had been sick and he replied that they must have ate something dodgy. Mrs Smart asked him when the bar had last been cleaned but he did not respond. Mrs Smart pointed out that the bar was extremely wet all the way along and therefore it had not been cleaned for some time and probably had lots of handprints on too. Mrs Smart asked to see Track and Trace records but Mr Lang said that he thought he didn't need to keep details as he knows all his customers by name and has their telephone numbers. Mrs Smart will state that she formed the opinion that the risk assessment was a paper exercise and that few, if any, of the measures that had been written in the assessment were being managed by Mr Lang and his staff.

Whilst Mrs Smart was talking to Mr Lang, Mr Martin noted that the volume of music was very loud, Mrs Smart and himself were struggling to hear what Mr Lang said and the volume was too loud to be classed as background music. He asked Mr Lang to turn the volume of music down.

During Mrs Smart's discussions with Mr Lang she noted that he appeared to be under the influence of alcohol and asked him how much he had drunk. He said he had probably had a bottle of wine. At one point he said he didn't know anyone who had had coronavirus and no one had died of it within Torbay. Mr Martin advised Mr Lang that as Mr Lang was talking he could see spit coming out of his mouth and this demonstrated why social distancing is important to stop the spread.

Mrs Smart told Mr Lang that apart from one bottle of hand sanitiser, it was apparent that the premises were operating exactly the same as usual and that this was not acceptable. As Mr Lang was clearly under the influence of alcohol she arranged to meet him at the premises at 10.00 am on Monday 6 July 2020.

At 10.00 am on Monday 6 July 2020 Mrs Smart attended the premises with Sgt Dave Curtis, Licensing Sergeant for Devon. At that time Mr Lang told Mrs Smart and Sgt Curtis that he had decided to close for at least a couple of weeks as he did not think that he could manage his customers to ensure they sit down and comply with the requirements. Mr Lang said that he would contact Mrs Smart prior to re-opening in order that they could meet and Mrs Smart told him that she would help him with his risk assessment and measures that he needed to introduce.

Several weeks later Mrs Smart noticed that the premises were open, despite Mr Lang not having contacted her to discuss the re-opening of his premises.

Between 4 July 2020 and 13 August 2020 Mrs Smart received several complaints in relation to Sporty's. These relate to noise nuisance and drug issues.

On 23 September 2020 Mrs Smart, Sgt Curtis and Mr Martin attended the premises and met with Mr Lang. Discussions took place concerning complaints received from a local resident and a full inspection of the premises was carried out. It was

apparent that several conditions contained within the premises licence were not being complied with, and therefore Sgt Curtis issued a Closure Notice under Section 19 of the Criminal Justice and Police Act 2001. At the conclusion of this meeting Mr Lang was warned that due to the number of complaints the police had received and the fact that in the past it does not appear that he had heeded advice given to him, if further complaints or the measures outlined in the closure notice were not complied with, the police will seek a review of the licence. Further details in relation to this visit, and other concerns in respect of this premises, will be disclosed prior to the date of the full Review hearing.

At 1352 hrs on Thursday 11 November 2020 Mrs Smart received an email from a member of the public who advised her that 4 people had just been seen entering the rear of the premises.

This information was passed to the Neighbourhood Policing Team and two officers subsequently attended the premises at approximately 1530 hrs. They approached via the rear entrance and through the Upvc door they could see the outline of people within, they could hear music and also heard several voices. Upon knocking on the door Mr Lang said "Hold on lads" and went further into the building before then returning about 5-6 seconds later to open the door. In that timescale the voices and music stopped. Upon entering the premises, Mr Lang was alone in the bar next to the pool table. 5 glasses, some of which appeared to contain alcohol, were seen in various locations within the premises. Officers state that Mr Lang very quickly realised why they were there and made an excuse that he was just having a few drinks with one other person as it was Remembrance Day. PC Abercrombie asked Mr Lang where everyone had gone and stated he heard several voices from outside. Mr Lang allowed officers to check the toilets and other spaces in the bar area but no other persons were found.

Mr Lang then allowed PC Thomas to go upstairs to his living area where the officer was met by a male who stated he was Mr Lang's friend. This male provided the officer with his name, address and telephone number. This male does not live at the pub or Mr Lang's flat. The male was in drink and PC Thomas states he too realised why the officers were present.

PC Thomas then went into the living area and sitting on the sofa was a further male. This male explained to the officer that he was having a bad time with his life and asked him not to blame Jim for having him in the pub.

One of the males then went downstairs and spoke to PC Abercrombie, who took his details. This male does not live at the pub or Mr Lang's flat. During discussions this male stated that he and Mr Lang had gone to the cenotaph and had returned to the pub to drink and play pool.

PC Thomas, Mr Lang and the other male returned to the bar and that male then left the premises.

Mr Lang and the other male then had discussions with the officers concerning Covid19 within the bar area and during this time the male lit a cigarette and smoked it, flicking ash in an ashtray positioned on a side table. During these discussions


both the male and Mr Lang picked up what appeared to be alcoholic drinks and consumed these in front of the officers.

Mr Lang told officers that his friends weren't there for very long but that they had been playing games of pool and that it was first to 11.....and he was 10-1 up!

The officers gave strong words of advice to all persons and advised Mr Lang that they would be advising Mrs Smart of this matter.

As a result of this incident, Mr Lang has been issued a fixed penalty ticket for £1,000 by Torbay Council.

Any other information:

Signature of applicant:	
Date:	30/11/20
Capacity:	Superintendent, South Devon FCU.

Contact details for matters concerning this application:

Address: Licensing Officer Julie Smart, Torquay Police Station, South Street, Torquay, TQ2 5AH

Telephone number(s): 07921 933974

Email: julie.smart@devonandcornwall.pnn.police.uk

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of twenty- one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.