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**Minutes of the Licensing Sub-Committee****19 November 2020****-: Present :-**Councillors Ellery, Foster and Kavanagh

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**39. Election of Chairman/woman**

Councillor Ellery was elected as Chairman for the meeting.

**40. Rock Garden, 40 - 44 Swan Street, Torquay**

Members considered a report on an application for a Review of a Premises Licence in respect of Rock Garden, 40 – 44 Swan Street, Torquay.

Written Representations received from:

Name	Details	Date of Representation
Applicants seeking the Review	Application seeking a Review of the Premises Licence.	Dated 20 September 2020
Respondent	Representation objecting to the application for Review.	22 October 2020
Member of the Public	Representation objecting to the application for Review.	21 October 2020
Member of the Public	Representation objecting to the application for Review	22 October 2020
Public Protection Officer	Representation in respect of the application for Review.	22 October 2020

Additional Information:

With the agreement of the Chairman, the time permitted for the submission of oral representations was extended to 20 minutes for all parties.

Oral Representations received from:

Name	Details
Applicant	The Applicant outlined his application requesting a Review of the Premises Licence.
Applicant	The Applicant also outlined his reasons for applying for a Review of the Premises Licence and responded to Members questions.

Applicant	The Applicant outlined his reasons for applying for a Review of the Premises Licence and responded to Members questions.
Respondents Representative	The Respondents Representative outlined his representation against the application for a Review of the Premises Licence and responded to Members questions.
Respondent	The Respondent outlined his representation against the application for a Review of the Premises Licence.
Public Protection Officer	The Public Protection outlined his representation and responded to Members questions.
Member of the Public	A Member of the Public outlined her representation against the application for a Review of the Premises Licence.

Applicant's response to Representations:

At the request of the Applicant a number of sound recordings that had been recorded via the Council's Noise App were played for the Committee.

**Decision:**

That in respect of the application for a Review of a Premises Licence of The Rock Garden, 40 – 44 Swan Street, Torquay, Members unanimously resolved that in this instance, no formal action is required.

**Reasons:**

Having carefully considered all the written and oral representations, Members could not be satisfied on the evidence before them, that the test of public nuisance in its widest form, as intended by the Licensing Act 2003, had been met in this instance. Members did however accept, that a level of disturbance was present from the premises operation, albeit not amounting to a public or statutory nuisance.

In coming to their decision, Members had regard to the actions taken by the Premises Licence Holder following the Review of the Premises Licence in 2014, the ongoing engagement by the Premises Licence Holder with the Responsible Authorities to address any issues of concern as they arose, the Premises Licence Holders proactive and responsible attitude and approach to finding measures to prevent such occurrence and the positive characterisation of the Premises Licence Holder put forward by the Public Protection Officer, both in his written and oral representation; and unanimously resolved that where a solution could be found to the disturbances complained of between the hours of 6.30pm and 9.30pm, that the Premises Licence Holder would implement these, without the need to modify the premises licence.

Members noted that the premises were located within the town centre and within an area that was known to be the night time economy which in itself, was reasonable to expect some levels of disturbance. Members further noted that there were representations in support of the Respondent from other Interested

Parties, one of which lived in closer proximity to the premises, than the Applicants and they did not report the same level of disturbance advanced in the application. Furthermore, that resident echoed the responsible attitude and approach Members would expect of a Premises Licence Holder to remedy nuisance when it occurred.

As advanced by the Public Protection Officer, Members recognised that the national lockdown had resulted in a period of considerable silence that would be unusual for such a town centre location and in their opinion, had resulted in people's tolerance of noise being reduced. Such a period of silence, followed by the introduction of the Government's 'Eat Out to Help Out' Scheme resulted in an increase in business for premises and that measures for premises to be Covid secure, had also resulted in more people being seated in outside areas. The combination of quiet, coupled with a sudden increase in noise, was reported by the Public Protection Officer to have resulted in a number of noise complaints about premises across Torbay being received by the Authority's Licensing Department which had never caused them noise concerns before. This Members found to be the case in this instance, given the periods complained of falling in line with timings of the Scheme and the absence of any complaints since the 2014 Review, with the exception in 2018, when the Applicant's raised with the Licensing Authority a concern with regards to the use of Temporary Event Notices, believing they were being used to circumvent the outcome of 2014 Review.

Should matters of concern arise out of this unanimous decision not to take formal action in this instance, being satisfied that the Premises Licence Holder will document measures to be taken within their premises Noise Management Plan and implement these to address noise issues, as they have done so since 2014, Members noted that a Review of the premises licence is available where a public nuisance exists.

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Chairman/woman