

Appendix ④

Memorandum

To:	From	:	Community Safety
c.c	Contact	:	Mr Karl Martin
c.c.	Ext	:	01803 208025
c.c	My Ref	:	No18REP
.	Your Ref	:	
For the attention of: Sarah Clarke	Date	:	22 nd April 2021

Premises Name & Address: No 18, 18 Esplanade Road, Paignton

Subject: Variation application – Licensing Act 2003

a) I have no comments to make on the above application

b) The application does not meet the following licensing objectives:

- i) Prevention of crime and disorder
- ii) Protection of children from harm
- iii) Public safety
- iv) Prevention of public nuisance

1. This application is the second variation application submitted by the applicant seeking to extend the terminal hour for the sale of alcohol from 1:00am until 3:00am.

2. As the Responsible Authority for Public Nuisance I raised an objection to the first application as to grant as applied for would undermine the licensing objective rather than promote.

3. At a licensing sub-committee hearing held in October 2019 I presented to members of the committee that I was reassured historical noise outbreak problems from within the premises had been addressed. However I was not satisfied the effect of noise from patrons leaving the premises after 3:00pm had been satisfactory addressed. Evidence was presented to the committee by residents and myself confirming the premises had for many years caused noise disturbance to the local community.

4. Members of the Licensing Committee determined to refuse the application on a number of grounds, including concerns regarding the impact on the local community:-

‘However, on the evidence before them, Members were not able to gain the same level of reassurance they required in respect of ensuring that ‘the prevention of public nuisance’ licensing objective was promoted when determining an application for a 3am licence. Members had careful regard to, what in their opinion, was the high likelihood of risk of residents being unreasonably disturbed by patrons leaving the premises and entering in to

areas in the immediate vicinity of the premises which are residential, both commercially and private. As such, Members could not be satisfied that in granting the application, 'the prevention of public nuisance' licensing objective, would not be undermined.

5. At the time of writing this report I am aware of several objections from residents expressing the same concerns.
6. The representation submitted in September 2019 is still appropriate and I include this with this representation as Appendix 1. Note, points numbered 9-12 are not relevant to this application and have been addressed by the applicant.
7. The applicant has provided a dispersal policy but the policy does not offer anything new that has not already been tried before and failed.

Any licensed premises must work within the confines of its geographical and demographic area. The premises, though situated on the seafront is linked to the rest of the town center by streets containing a mix of residential accommodation and hotels. Kernou Road and adjacent streets offers the quickest route towards the town centers taxi ranks and late night refreshment venues.

For over ten years this premises operated with a 3:00am licence and subjected residents to noise disturbance from customers leaving the premises on a regular and sustained basis. Whilst it can be acknowledged some of these incidents related directly to poor management, the vast majority was due to the proximity of residential areas. Complaints about noise or anti-social behaviors have diminished since the terminal hours of 1:00am was installed by the Licensing Sub-Committee at a new application hearing held in January 2019.

The current 1:00am licence has achieved a balance of acceptability between the residential community, the hotelier community and licensed premises. 1:00am for this area of Paignton is working and this can be evidenced in the lack of complaints to the Council about noise or anti-social behavior. This is not to say the community is unaffected by noise issues before 1:00am but rather a reflection they accept the location they live in or operate a business from.

8. The applicant has not provided anything new that can reassure the community that the balance will remain to everyone's benefit. I would argue it is simply not possible to operate beyond 1:00am without causing a detrimental effect on the community surrounding the premises.
9. Torbay Councils Licensing Statement of Principles P22 Para 4 states:-

'Where Applicants are completing Operating Schedules, they are expected to have regard to the location of the proposed or actual premises. In particular, consideration should be given to whether proposals may have a disproportionate impact in residential areas or near to sensitive premises such as nursing homes, older people's accommodation, hospitals, hospices, schools, childcare facilities or places of worship.'

I argue the application has failed to give appropriate weighting to the surrounding community and the impact the application, if granted, would have.

10. Torbay Councils Licensing Statement of Principles P22 Para 6 states:-

'Proximity to residential accommodation is a general consideration with regard to the prevention of public nuisance. The Authority will treat each case on its individual merits, however, stricter conditions will generally be considered on premises licenses in areas that have denser levels of residential accommodation or residential accommodation in close proximity to them. This may include, where appropriate, the Authority considering an earlier terminal hour than that proposed by the Applicant'

I argue that twice the Licensing Sub-Committee have recognised that a 1:00am terminal hour for this premise is appropriate and proportionate when taking into account the proximity of residential areas, and the real effects this premises has on the community in the past. The applicant has not provided any evidence based assessment that a 3:00am licensed would not undermine the licensing objectives.

11. The operating schedule is silent on matter of managing those who consume alcohol above their tolerance levels. The applicant has a duty of care under the Health and Safety at Work Act 1974 to consider appropriate levels of First Aid provision. The relevance to a licensing application is the operator must consider how to manage the safety of patrons who are intoxicated and need some level of direct assistance from members of staff.

Are qualified first aiders on site at all times? How the premises deal with highly intoxicated customers, will they simply eject them from the premises and allow them to cause noise nuisance as they voyage through the residential areas? Will a taxi be called to get them home? What policies does the operator have to demonstrate this has been considered. The later the premise operates increases the risks such issues of drunkenness will arise.

12. I acknowledge the applicant has considered in the operating schedule and supporting documentation, notable the notice management plan dispersal policy, the effect a 3:00 terminal hour would have on the surrounding area.
13. However I maintain the current 1:00 am terminal is proportionate when taking into account the local area. I ascertain that it not within the power of any operators to manage Patrons once they have left the sphere of influence of the premises.
14. The evidence supports a 1:00 am licence works. For than 10 years the premises operated beyond 1:00am the Council and Police received sustained complaints of noise and anti-social behaviour. The Council has not received a single complaint about noise emanating from this premises since a 1:00am licence was granted.

15. I respectfully ask members of Licensing Sub-Committee to refuse the application as applied for as to grant would undermine the licensing objective the 'Prevention of Public Nuisance.

Mr Karl Martin
Public Protection Officer
Torbay Council

Memorandum

To:	From :	Community Safety
c.c	Contact :	Mr Karl Martin
c.c.	Ext :	01803 208025
c.c	My Ref :	No18REP
For the attention of: Gary O'Shea	Your Ref :	
	Date :	27th September 2019

Premises Name & Address: No 18, 18 Esplande Road, Paignton

Subject: Variation application – Licensing Act 2003

a) I have no comments to make on the above application

b) The application does not meet the following licensing objectives:

- i) Prevention of crime and disorder
- ii) Protection of children from harm
- iii) Public safety
- iv) Prevention of public nuisance

1. The applicant seeks to licence the basement area of an existing licensed premise knows as Hyde Dendy.
2. One half of the basement is currently licensed until 1:00am (PL1132) and the second half in recent years has been used as storage.
3. In the past the basement area adjacent to Kernou Road has been a fully licensed premises with a terminal hour of 03:00hrs.
4. Due to insolvency the premise licensed lapsed in 2017 requiring a former operator to submit a new license application. At hearing in March 2018 representations put forward by members of the public and responsible Authorities for Public Nuisance and for Crime and disorder. Please see appendix 1 for the decision notice.
5. At this hearing oral submission were given explaining the historical problems with noise nuisance from live and recorded music and from general nuisance from customers leaving the premises. Evidence to support a Public Nuisance had and was occurring contributed to a premises license only be granted with a terminal hour of 1:00am.

6. In November 2018 a meeting was arranged at the request of Mr Steve Narvidge with his legal representative, Julie Smart, Police Licensing and myself. The aim of the meeting was to discuss proposals for reopening the basement area as a licensed area until 3:00am. During this meeting in respect of noise I outlined the two issues I believe the applicant needs to examine in more detail:-
 - Noise breakout- Historical problems of live and recorded music breaking out of the building disturbing nearby residents. Compounded by numerous changes to the buildings configuration, location of fire exits and lack of management.
 - Noise in the street- Despite numerous attempts, previous operators have never been successful in mitigating the impact of the community by customers leaving the area via Kernou Road.
7. In July 2019 a second meeting took place at the premises with Mr Steve Narvidge. Also present Mr Xander Narvidge, Neil Carpenter of Future Technical Solutions, Carrie Cottell, Torbay Council Licensing Officer and Julie Smart, Police Licensing Officer.
8. Mr Narvidge has commissioned Mr Carpenter to produce a noise impact assessment of the building. The report was not available to view at the meeting but a broad range of proposals was discussed. In relation to :-
 - Noise Breakout – A number of proposals were put forward to prevent noise breakout which included a combination of physical improvements to the building such as improvements to fire exits, windows etc and installing in house PA equipment with noise limiters.
 - Noise in the street – A proposal to barricade of an exit on to Kernou Road and use of door stewards was put forward as a suggestion to control the way customers leave.
9. The application accepted by the Council does not contain Mr Carpenters Noise impact assessment. This maybe because the operator at this stage does not want this to become a public document. However without it there is no fine detail to comment on.
10. The application does however by way of suggested conditions indicate the operators is installing noise limiters.
11. The application does not fully address the impact of customers leaving the premises and this remains the greater concern.

Conclusion and recommendations

12. At this time I fully expect to continue working with Mr Narvidge and therefore it is prudent to circulate an update with recommendations ahead of the committee hearing.

**Mr Karl Martin
Public Protection Officer
Torbay Council**

Appendix 1 – Reason for decision – Committee hearing Thursday 23rd November 2017
Reason for decision

Having carefully considered all the oral and written Representations, Members resolved to grant the application with modifications, as they could not be satisfied that the mitigation put forward by the Applicant would ensure that The Prevention of Public Nuisance licensing objective would be promoted, due to the premises being in such close proximity to that of residential premises and commercial premises which offered guest accommodation.

Members noted the oral submissions of the Responsible Authorities in respect of the efforts and improvements made by the previous owners who are now the current managers to address noise nuisance emanating from the premises and its patrons but in the knowledge that these persons were imminently due to vacate the premises, they could not be satisfied at this stage that the new owners would maintain the same level of firm control and therefore had serious concerns that conditions alone would not ensure that The Prevention of Public Nuisance Licensing Objective would be promoted, if a 3am licence was granted.

In coming to that decision, Members noted from all the written and oral Representations, the impact such a late licence has had and would have on the nearby residential premises and commercial premises which offered guest accommodation, in what on some occasions had gone on until 4am.

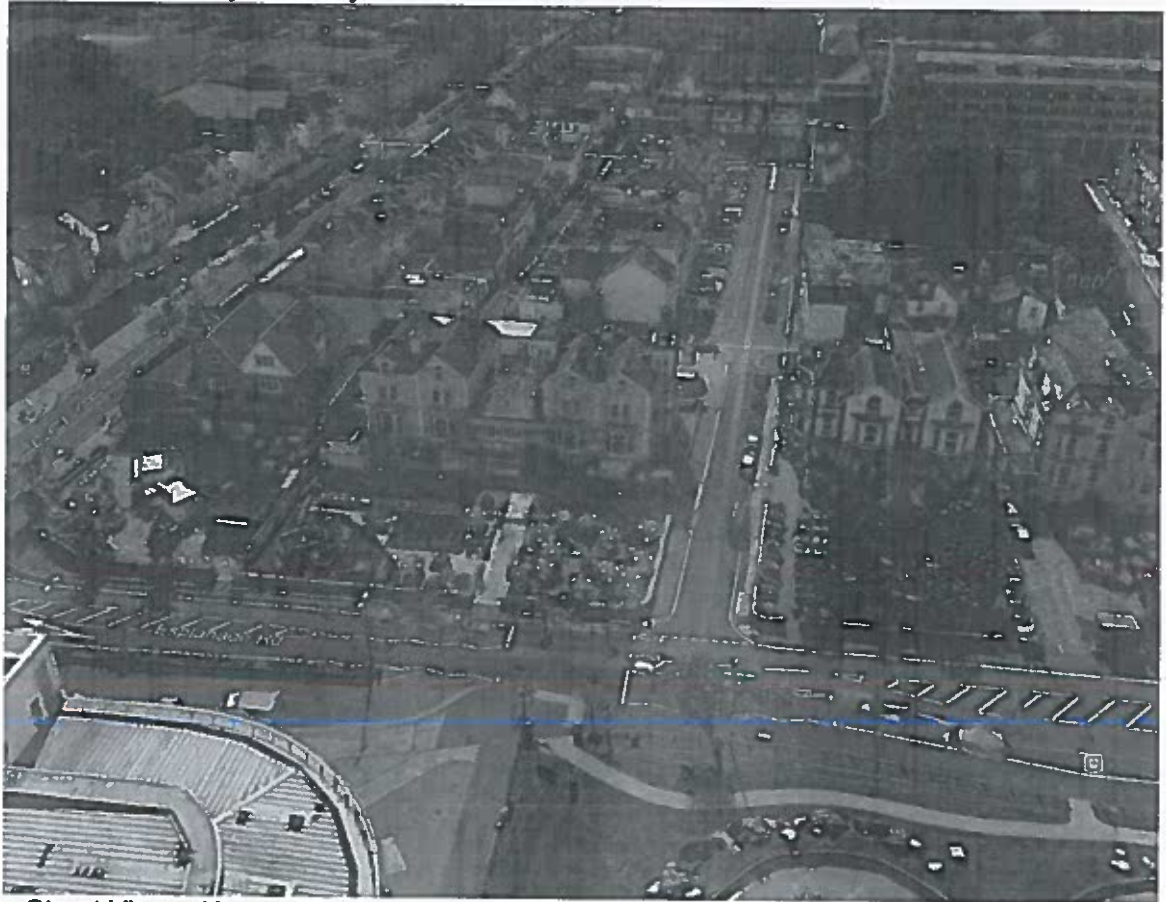
Given that this premise was the only premises operating a 3am licence in the direct vicinity, Members were satisfied that there was a causal link of noise attributable to patrons leaving this premises and to allow it to continue with such uncertainty, was in their opinion not appropriate or proportionate.

Notwithstanding the Licensing Authority's Statement of Principles which clearly sets out the expectations on Applicants where they seek licensable activities after 11pm in residential areas, Members determined that it was appropriate and proportionate to permit a 1am licence with a closing time of 1.30am, given the areas mixed use and the need for the area to have diversity of use and that other premises in the same location operated a 1am licence without significant impact of neighbouring residential premises. In coming to this decision, Members had regard to the written and oral representations from members of the public and the Responsible Authorities.

In concluding, it was disappointing to Members that despite this being the second attempt in hearing this application, it continued to lack specific detail and clarity in what was a request for a 3am licence. Only after oral submissions from the Applicant, Members questioning and consideration of proposed further amendments that Members were able to determine this application.

Appendix 2 – Maps

1.1 – Aerial view of Hyde Dendy



1.2 – Street View – Kernou Road



1.3 Street view - Esplanade Road



1.4 Map View



