

Briefing Report No:

Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – An application for a Review of a Premises Licence for, Hennessey Cocktails, 2 King Street, Brixham**

Wards Affected: **St Peter's with St Mary's**

To: **Licensing Sub Committee** **24 June 2021**

Contact Officer: **Amanda Turner**
Telephone: **01803 208112**
E.mail: **Licensing@torbay.gov.uk**

1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premises 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 Objectives "The Prevention of Crime and Disorder" and "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.

The Review application has been received from Devon & Cornwall Police as a Responsible Authority. Grounds for the Review relate to:

- Noise complaints from numerous residents living in the vicinity of the premises
- Non-compliance with permitted hours for licensable activities
- Non-compliance with conditions contained within the premises licence
- Failure to produce CCTV footage on numerous occasions
- Non-compliance with Covid regulations and guidance

Full details of the application are shown in Appendix 1.

A copy of the current licence is attached as Appendix 2 and a plan of the premises is attached as Appendix 3.

- 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 A notice stating a Review application had been made was issued by Torbay's Councils Licensing Department and delivered by the Council's Compliance Officer on 5 May 2021. Details of the Review have been advertised on the Council's website. The Notice advised of the grounds for the Review and requested representations should be made between 5 May and 1 June 2021 to Torbay Council in writing. All Statutory consultees were served a copy of the Review application.
- 3.2 There has been 5 Representations supporting the Review from local residents and 2 Representations received from local residents in support of the premises, who state that they are not affected by noise. These are all attached as Appendix 5.

3.3 There has also 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

No representation has been received from the Premises Licence Holder and no other representations have been received from any other Interested Party or Responsible Authority.

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	Plan of the Premises
Appendix 4	Representation from Responsible Authority
Appendix 5	Representations from the Residents

Documents available in members' rooms

None

Background Papers:

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

Torbay Council Licensing Policy 2021-2026.