

Memorandum

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| To: Licensing and Public Protection Team | From : Mr Karl Martin |
| c.c | Contact : |
| c.c. | Ext : ██████████ |
| c.c | My Ref : 1ZV SRU/KJM/ReviewHen |
| For the attention of: Sarah Clarke | Your Ref : |
| | Date : 28 th May 2021 |

Subject: Review application, Hennessey, 2 King Street, Brixham.

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. Please see Appendix 1. This is a copy of the representation submitted on the 29th June 2020 as part of an objection to a full variation application. This document summaries the location and history of the building and the chronology of noise complaints associated with the current operator, Mr Hennessey.
2. No noise new noise complaints received in 2020, or 2021 by the Authority. Since July 2020 until the 21st June 2021 at the earliest, recorded music has not been permitted above background levels under the various COVID 19 Regulations (tiers and steps).
3. I have read the review documentation and support the evidence provided by the Police. I confirm the accuracy of the report on the occasions where I am referenced as attending an inspection or meeting as outlined in the review documentation.
4. I can confirm on the 22nd December 2020 one fixed penalty notice was served on Ross Hennessey as the person responsible for a breach and one for the same offence was served on Hennessey Cocktails Ltd.
5. The details of the breach:-

Under The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 Regulation 8 and Schedule 2 Part 3 paragraph 14(-1)

- *Mr Hennessey Failed, without reasonable excuse, to cease to carry on the restricted business or provide the restricted service of providing alcohol for consumption on the premises if supplied as part of a table meal, and the meal is such as might be expected to be served as breakfast, the main midday or main evening meal, or as a main course at such a meal.*

6. Details of the offence:-

On the 12th December 2020 at 22:10 a Police Officer noted Hennessey cocktails was open as at least one customer was observed on the premises. In an email to Mrs Smart, Devon and Cornwall Police Licensing Officer, Mr Hennessey stated the premises will be closed until further notice from the 6th December 2020. On the 14th December 2020, Police Licensing received video footage taken on the evening of the 12th December 2020. The video footage does not show the person filming but does show two males sat in front of the bar consuming alcoholic drinks without being provided a substantial table meal. On the 15th December 2020 during a meeting with Mr Hennessey and Karl Martin, Council Public Protection Officer and Julie Smart, Mr Hennessey re-affirmed he had been closed since the 5th December. When asked about the 12th December Mr Hennessey stated he had two friends and one member of the staff in the premises for drinks only. He believed this was permitted by the regulations. Mr Hennessey showed the Officers CCTV footage confirming over a period of time Mr Hennessey and three other members of the public consumed Alcohol on the premises without being provided a substantial accompanying table meal.

7. Mr Hennessey appealed the notice to the head of service and it was denied in February 2020. To date the FPN remains unpaid and subject to further proceedings.
8. A second breach occurred on the 8th December but Mr Hennessey did not receive a further FPN for the contravention. Mr Hennessey hosted a private birthday at his premises for at least two separate households. This was despite advising Ms Smart he had closed the premises on the 5th December 2020 until further notice. The Covid restrictions in place at this time (Tier 2) prevented different household (more than 6) from mixing at indoor hospitality settings. Mr Hennessey had accepted a booking with the knowledge the participants were from different households, but claimed during a meeting on the 15th December 2020 the approx. 15 participants all lived together.

I argue on the balance of probability it is probably Mr Hennessey honoured the booking knowing the Birthday party would not be compliant with the requirements of tier 2. Infections rates were raising rapidly across the country and locally at this time from the Kent variant and I suggest Mr Hennessey recklessly put his own interest ahead of protecting his customers and the wider public.

9. The Government closed all licensed premises on the 30th December 2020. Hennessey Cocktails does not have any outdoor space and therefore could only re-open at the commencement of Step 3 on the 17th May 2021.
10. On Saturday 22nd May 2021 Officers from Community Safety working with Devon and Cornwall Police visited over 30 licenced premises thought-out the day and evening specifically for the purpose of Covid compliance audits. They noted several key covid requirements appeared to be in place such as table service, track and trace. They did however describe the premises as having a nightclub feel about the premises due to the volume of music. Until the 21st of June 2021 at the earliest recorded music must be kept at a volume that does not encourage persons to raise their voices in order to reduce aerosol.

11. The Officers spoke to Mr Hennessey and he agreed to turn the music down. He told them he understood it to be ok to have music at 'like normal levels'. Mr Hennessey was sent a copy of Torbay Councils guidance on the 12th May by Julie Smart. Of all the premises visited on the 22nd only Hennessey Cocktails was found to playing music at a volume deemed unacceptable.
12. I argue Mr Hennessey again paid no attention to what has been asked of him as a licensee by central Government. This typifies the attitude displayed by Mr Hennessey.
13. Since first meeting with him In October 2018 he has demonstrated a lack of professionalism in his approach to operating a licensed premises. The Review application details example after example where Mr Hennessey failed to comply with conditions of his premises licence. This includes serving alcohol after the terminal hours, noise outbreak, and hosting events where TENS has been rejected. A particular theme which has been a constant is a failure to provide CCTV.
14. On numerous occasions when asked to view CCTV Mr Hennessey has been unable to so. As often is the case there is some technological challenge, such as not having mouse or doesn't know the password. In cases where he was asked to forward CCTV footage at a later date he never did.

15. This has been particularly the case with the covid breached which occurred in December 2020. During a meeting on the 15th December Mr Hennessey was able to show us CCTV from the evening of the 8th and 12th December on his phone but was not able to download to a memory stick.
16. The review application clearly sets out the proceeding events but I would draws members of the licensing committee to an email Mr Hennessey sent to Sgt David Curtis on the 21st March 2021. This email highlights Mr Hennessey approach to managing a licensed premises as he is clearly weighing up the consequences of not handing over the CCTV footage. In an email to the Council in February 2021 he posed the question if the Council do not have a copy of the CCTV then they have no evidence of the Covid Breaches.

17. I argue Mr Hennessey has intentionally been un-corporative with the responsible authorities as a strategy to avoid the consequences of poor decision making and by doing so has undermine the licensing objectives.

18. Mr Hennessey does not take his role as a licensee seriously. He does not have regard to the conditions on his licence nor to businesses or residents who could be affected by his decision making. All the licensing infringements and more recently the covid infringements have all occurred whilst Mr Hennessey is present on site.



Karl Martin
Public Protection Officer
Licensing and Public Protection
Community Safety

Torbay Council

Memorandum

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|--|-------------------|----------------------------|
| To: Licensing and Public Protection Team | From : | Mr Karl Martin |
| c.c | Contact : | |
| c.c. | Ext : | ██████████ |
| c.c | My Ref : | 12V SRU/KJM/HEN |
| For the attention of: ██████████ Principle Licensing Officer | Your Ref : | |
| | Date : | 29 th June 2020 |

Subject: Full variation application, Hennessey, 2 King Street, Brixham.

- 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. Hennessey public house, Premises Licence PL1116 is situated on the harbour facing side of Kings Street. The premises is one of two licensed premises which form part of the ground floor of a former warehouse that was redeveloped approximately 3 years ago. The two floors above primarily consist of residential and office space.
2. The geography of the surrounding area is a significant factor when considering how noise propagates in this area. The surrounding landmass is relevantly steep sided and densely built on; residential and hospitality accommodation is the primary use. The main retail area is nearby.
3. Currently the area benefits from low ambient noise, particularly after midnight in part due to the lack of significant infrastructure and the absence of an established night late economy.
4. There are two elements to this applications that ask the Licensing Committee to consider in relation to the Prevention of Public Nuisance

- Proposal to extend the timings for the sale of Alcohol and regulated entertainment from midnight until 3:00am with a 3:30am closure time.
- Proposal to include an outside seating area situated on New Quay lane.

4.0 Outside seating area

4.1 The applicant seeks to include an area approximately 5m x 2m. Please see Appendix 1.1.

4.2 New Quay lane is designated as a public road and requires a Pavement Café Consent. The Council has recently introduced a temporary licensing scheme in response to Covid19 which encourages far greater use of public highway to help businesses maintain current social distancing measures.

4.3 The applicant has submitted an application under this scheme asking for consent to place tables and chairs on the highway that mirrors this variation application.

4.4 The temporary pavement café consent has been rejected because the Authority does not have the powers to close the road unless a formal application is submitted and granted by the Highway Authority. Applicant advised.

4.5 At the time of writing the applicant has no legal consent to occupy or place objects on the highway.

4.6 Despite a potential *contra legem* I do not believe this area could be used for seating or indeed as a smoking area without giving rise to noise nuisance.

4.7 The Lane is occupied by a licensed premises (under previous ownership) whose customers congregated in the Lane during trading hours and loitered after closing. This caused significant disruption to nearby residents, some of which overlook the lane. Enforcement action was taken by the Authority to remedy nuisance.

4.8 It may be permissible to use only as a smoking area. However noise from customers, even if limited to a handful would be challenging. The Authority has received complaints regarding customer noise using the highway at the front of the premises therefore confidence remains low that the applicant could manage noise levels in a far more sensitive area.

4.9 I note a number of representations have been received from residents and I support their concerns in relation to use of the Lane and find it difficult to reassure residents as the applicant has failed to provide suitable mitigation in the operating schedule.

The applicant has been previously advised Responsible Authorities could not support an application to use New Quay Lane.

5.1 3:00am terminal hour for Alcohol and regulated entertainment (Fri-Sat)

5.2 The current licence permits regulated entertainment until midnight, 7 days week. The applicant has been the DPS since October 2018 and the licensee since November 2018.

5.3 A multi-Authority inspection took place on the 27th October 2018. The applicant had submitted a TEN to extend licensable hours until 3:00am to accommodate a Halloween celebration.

On approaching the premises at approximately 11:15pm I noted the volume of amplified music was excessive and if continued until 3:00am I was confident would invite noise

complaints. The applicant was advised to turn the music down which the DJ did but I cannot with confidence state the level remained at a lower volume for the remainder of the night.

- 5.4 The Authority received three complaints from residents following the evening of the 27th October. In a subsequent meeting the applicant was given noise management advice including the recommendation to seek specialist advice.
- 5.5 Noise complaints associated with this premises continued until March 2019. The common grievance stated by residents includes allegations of after hours, excessive music after and before midnight, noise and other anti-social behaviour from customers in the street.
- 5.6 On the 16th February 2019 a second multi-agency visit to Hennessey took place. Before entering, the premises was observed from King Street. The location is approximately 70m from the premises and contains a large density of residential and hospitality accommodation.

Low frequency music could clearly be heard and likely to be loud enough to be heard in nearby homes. At times whilst the front door was open (not lobbied) the apparent volume doubled and included higher frequencies including vocals. The 'Warbling' effect from repeatedly opening and closing single entranced doors is a significant factor in noise complaints.

Noise from customers was equally excessive and at no point did we see door staff attempt to manage the situation. An area marked on the premises plan for smokers to use was not being employed.

Julie Smart, Devon and Cornwall Police Licensing Officer, entered the premises unchallenged shortly after midnight. The DJ was still playing music at a volume witnessed on King Street which in itself is far in excess of 'background'. Music should have ceased at midnight. A sale of alcohol took place at 00:15 at which point we intervened and spoke to Mr Hennessey (applicant) and instructed him to turn the music off and start clearing the premises.

Mr Hennessey was sent a written warning regarding his management of his premises on the 16th February 2019.

- 5.7 In March 2019 after a series of complaints from local residents in February 2019 regarding a range of issues including noise nuisance, the decision was taken to invite Mr Hennessey to the Town Hall to discuss an action plan for moving the premises forward. This meeting took place on the 19th March 2019.

By this time both Police Licensing and Public Protection felt it was increasingly likely the evidential threshold to trigger a review was highly likely to be exceeded in matter of weeks.

- 5.8 Shortly after the meeting Mr Hennessey instructed a sound engineer to survey the premises including the current PA system. The PA was upgraded to include a noise limiter. The limiter was set by the engineer and to my knowledge has not been adjusted since.

The Authority did not receive any further noise complaint until the 18th November 2019 and related to an evening which the premises had applied for a late TEN. The TEN was rejected as it was served out of time. The allegation made claimed premises remained open after midnight.

Mr Hennessey stated the event was cancelled and the noise complaint must have referred to staff playing music too loud during clean up following the shutting of the premises at midnight. As CCTV footage did not materialise, despite the best efforts of Mr Hennessey, it

is difficult to ascertain if his account is accurate. In any case advice was given regarding the volume of music.

To the best of my knowledge the premise was mostly shut in January and February 2020 and closed by order of the Government in March 2020 and remains closed until at least the 4th July 2020

- 5.9 The Applicant has not detailed beyond employing extra door staff any additional mitigating measures to reassure residents or responsible authorities that if the premises is granted a 3:00am it will operate in the spirit of the Licensing Act.

P40 Para 2 of the Licensing Statement of Principles states:-

'This Authority expects applicants for premises licences and club premises certificates to have made relevant enquiries about the local area and prepare their operating schedule on the basis of a risk assessment of the potential sources of nuisance posed to the local community by their intended operation. The operating schedule should demonstrate an understanding of the level of risk of nuisance and include positive proposals to manage any potential risks'

The applicant is clearly aware there is risk of causing nuisance as he is premises has been the subject of number of noise complaints.

6.1 Conclusion

- 6.2 Mr Hennessey in first 6 months running the premises fell short of professional standards expected of licensees. By failing to adhere to the terms of his premises licences he undermined the licensing objectives instead of promoting. Only after the threat of a review did Mr Hennessey bring noise nuisance under control and begin to repair trust with his neighbours.

- 6.3 Between April and November 2020 there were no complaints. One in November but no more during the Christmas and the New Year trading period. Despite the initial infringements for at least a greater part of 2019 Mr Hennessey proved he could run his premises to midnight and promote the licensing objectives.

- 6.4 Torbay Councils Statement of Principles p40 para 4 states;-

'There will be an assumption however that Licensed Premises in residential areas, or where there is proximity to residential properties, will only be allowed to undertake Licensable Activities until 11pm unless detailed consideration and mitigation measures have been proposed to address those concerns'

- 6.5 This statement recognises premises who operate after 11:00pm in residential areas increase the likelihood of creating public nuisance, if not carefully managed. The risk of nuisance occurring and the impact this can have on residents living nearby exponentially increases as the night goes on.

- 6.6 Its fact this premises is situated in a natural bowl allowing sound energy waves to freely propagate throughout the surrounding area. The hard surfaces of densely packed building situated on the steep hills further reflect sound back out in every direction.

The applicant's premises would be the only premises operating regularly until 3:00am and would not benefit from the elevated ambient noise from other premises that help mask any outbreak.

- 6.7 Torbay Councils Statement of Principles p40 para 3 states;-

'The Licensing Authority will presume against the grant of new Premises Licences or Licence Variations and Club Premises Certificates where there are extensions in operational hours, or the addition or extension of activities (regulated entertainment) that may cause public nuisance, where the Applicant has not properly considered the issue of nuisance and where appropriate sought advice from those with expertise in this field, in order to alleviate any concerns arising.'

6.8 Beyond a plan, an application form with a brief operating schedule the applicant has not provided any additional information or documentation that can assist in determining how likely the Applicant can control noise from music outbreak and people outside the premises but also the noise as they disperse between after 3:00am.

7.0 Recommendations

As the application does not offer enough detail to evaluate the application systematically and on its merits I can only duly ask the members of the Licensing Sub-Committee to consider refusal of the application as applied for by the Applicant on the grounds:-

- Inherent weakness in the structure of the building and its ability to attenuate noise.
- The proximity to densely packed residential buildings.
- Resistance from residents to promote a night economy with operating hours beyond midnight.
- The applicant has failed to identify suitable mitigation methods as required by Torbay Councils Licensing Statement of Principles
- History of noise complaints.
- Premises has largely been shut in 2020 thereby the applicant cannot demonstrate recent management of the premises.
- Applicant not authorised to use a public road.
- Failings by the Applicant to promote the licensing objectives and by not operating within the terms of his current authorisation.



Karl Martin
Public Protection Officer
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Appendix 1- Google image showing topography.



Appendix 1.1 Google street view of Newquay Lane.

